

Supreme Court, U.S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1978

No. 78-1723

STATES STEAMSHIP COMPANY and
PACIFIC FAR EAST LINE, INC.,
Petitioners,

vs.

THE HONORABLE ALFONSO J. ZIRPOLI, SENIOR DISTRICT JUDGE,
(R. J. REYNOLDS TOBACCO COMPANY and
SEA-LAND SERVICE, INC.,
Real Parties in Interest),
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of
Appeals for the Ninth Circuit

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Petitioners pray that a writ of certiorari issue to review the order of the United States Court of Appeals for the Ninth Circuit, entered on April 20, 1979, refusing a writ of mandamus directing the Honorable Alfonso J. Zirpoli, Senior Judge, United States District Court, Northern District of California, to vacate his order of January 9, 1979 requiring petitioners to proceed to trial without a jury as to contested issues of material fact raised by the pleadings

for which petitioners have properly demanded trial by jury pursuant to the Seventh Amendment to the Constitution of the United States and Rules 38(a) and 42(b) of the Federal Rules of Civil Procedure.

ORDERS BELOW

The January 9, 1979 order of the District Court requiring non-jury trial is set forth in Appendix A to this petition.

The order of the United States Court of Appeals for the Ninth Circuit denying the petition for a writ of mandamus is set forth in Appendix B to this petition.

JURISDICTION

The order of the United States Court of Appeals for the Ninth Circuit was entered on April 20, 1979.

The order of the United States District Court requiring petitioners to submit to non-jury trial was entered on January 9, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves the Seventh Amendment to the Constitution of the United States of America and Rules 38(a) and 42(b) of the Federal Rules of Civil Procedure.

The Seventh Amendment provides:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

Rule 38(a) of the Federal Rules of Civil Procedure provides:

"Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate."

Rule 42(b) of the Federal Rules of Civil Procedure provides:

"Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counter-claims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States."

QUESTION PRESENTED FOR REVIEW

Is an order of a United States District Court, made pursuant to Rule 42(b) of the Federal Rules of Civil Procedure, which requires that a party submit to a separate, non-jury trial of contested issues of material fact raised by the pleadings constitutionally permissible when the party has properly demanded trial by jury as to said issues; where the District Court has stated that it will itself decide facts and the credibility of witnesses as though there was an "actual trial" of said issues and where the court has indicated that its decision as to said issues of fact will be binding on the parties and be sustained by a Court of Appeals absent "really clear error" by the District Court in its fact finding process?

STATEMENT OF THE CASE

The Nature of the Case

These are consolidated private antitrust suits brought by petitioners under Sections 4, 12 and 16 of the Clayton Act [15 U.S.C. §§ 15, 22 and 26] to secure damages for and injunctive relief against violations of Sections 1 and 2 of the Sherman Act [15 U.S.C. §§ 1, 2] and Sections 2(c), 3 and 7 of the Clayton Act [15 U.S.C. §§ 13(c), 14 and 18].

Material Facts

A. The Parties

Petitioner States Steamship Company [States] is a Nevada corporation with its principal place of business in San Francisco, California. During the period of time covered by its complaint, it was an ocean freight carrier engaged in the business of transporting freight by American Flag vessels in United States and foreign commerce. States entered proceedings under the United States bankruptcy laws in December, 1978.

Petitioner Pacific Far East Line, Inc. [PFEL] is a Delaware corporation with its principal place of business in San Francisco, California. During the period of time covered by its complaint, it was, like States, engaged in the business of transporting freight by American Flag vessels in United States and foreign commerce. PFEL entered proceedings under the United States bankruptcy laws in January, 1978, and is in the process of final liquidation.

Respondent Sea-Land Service, Inc. [Sea-Land] is a Delaware corporation. Sea-Land has its principal place of business in Menlo Park, New Jersey. Sea-Land is the largest steamship company in the United States and the largest

containerized steamship company in the world. Sea-Land operates 55% of all American flag container ships sailing between the United States and foreign countries and 31.6% of all container ships in the world. Sea-Land is wholly owned by R. J. Reynolds Industries, Inc., which, in addition to Sea-Land, owns and controls all the capital stock of a number of subsidiaries. These include: respondent R. J. Reynolds Tobacco Company, the largest manufacturer and marketer of tobacco products in the United States; McLean Industries, Inc., the largest trucking company in the United States and a holding company for Sea-Land; Reynolds Leasing Corporation, established by Reynolds Industries to act as a purchaser and charterer of ships, containers and chassis for the exclusive use of Sea-Land; RJR Foods, Inc., a major manufacturer and marketer of various food products; RJR Archer, Inc., a major manufacturer of packaging and wrapping materials, aluminum foil and specialty products; Aminoil International, Inc., a holding company for American Independent Oil Company; and, Aminoil USA, Inc., a major oil producer and marketer.

B. The Pleadings and Jury Demands

1. Pacific Far East Line, Inc.

(a) On October 15, 1976, PFEL filed its "Complaint For Damages And Injunctive Relief Under Federal Antitrust Laws (Jury Demanded)". The complaint alleged, *inter alia*, that Sea-Land had paid rebates in violation of the law. The complaint contains the following recitals and demand:

"Plaintiff Pacific Far East Line, Inc. (hereinafter "PFEL"), demanding trial by jury, complains and alleges as follows:...

Pursuant to Rule 38(b), Fed.R.Civ.P., plaintiff hereby makes demand for jury trial." [Appendix C, pp. 1, 11].

(b) On November 9, 1976, Sea-Land filed its "Answer And Counterclaim Of Defendant Sea-Land Service, Inc.", praying for dismissal of the complaint, treble damages and injunctive and declaratory relief. Sea-Land alleged, both by way of affirmative defense and in its counterclaim, that PFEL was guilty of unclean hands and that it had violated the law by paying rebates and by issuing false denials of its own rebating practices. Sea-Land made no request for jury trial. [Appendix D].

(c) On December 17, 1976, PFEL filed its "Amended Complaint For Damages And Injunctive Relief Under Federal Antitrust Laws (Jury Demanded)". The amended complaint was more specific than the original complaint and alleged, *inter alia*, that Sea-Land had paid approximately \$20,000,000.00 in rebates from 1971 through 1975. The amended complaint contains the following recitals and demand:

"Plaintiff Pacific Far East Line, Inc. (hereinafter "PFEL"), demanding trial by jury, complains and alleges as follows:....

Pursuant to Rule 38(b), Fed.R.Civ.P., plaintiff hereby makes demand for jury trial." [Appendix E, pp. 1, 15].

(d) On December 23, 1976, PFEL, pursuant to formal stipulation, timely filed its "Reply To Counterclaim of Defendant Sea-Land Service, Inc. and Counterclaim of Pacific Far East Line, Inc. (Jury Demanded)". PFEL's answer denied, *inter alia*, that it had paid rebates or had issued

false denials of the existence of rebates. PFEL's reply to Sea-Land's counterclaim contains the following demand:

"Pursuant to Rule 38(b), F.R.Civ.P., PFEL hereby makes demand for jury trial on all issues raised by the counterclaim of Sea-Land, PFEL's reply thereto and the counterclaim of PFEL." [Appendix F, p. 6].

(e) On January 7, 1977, Sea-Land filed its "Answer To Amended Complaint And Counterclaim Of Defendant Sea-Land Service, Inc.", praying for dismissal of the amended complaint, treble damages and injunctive relief. Sea-Land again alleged, both by way of affirmative defense in its counterclaim, that PFEL was guilty of unclean hands and that it had violated the law by paying rebates and by issuing false denials of its own rebating practices. Sea-Land made no request for jury trial. [Appendix G].

(f) On February 3, 1977, PFEL filed its "Reply To Counterclaim Of Defendant Sea-Land Service, Inc. And Counterclaim Of Pacific Far East Line, Inc. (Jury Demanded)". In its answer to Sea-Land's counterclaim PFEL denied that it had paid rebates or issued false denials of the existence of rebates. PFEL's reply to Sea-Land's counterclaim contains the following demand:

"Pursuant to Rule 38(b), Federal Rules of Civil Procedure, PFEL hereby makes demand for jury trial on all issues raised by the counterclaim of Sea-Land, PFEL's reply thereto and the counterclaim of PFEL." [Appendix H, p. 6].

2. States Steamship Company

(a) On March 21, 1977, States filed its "Complaint For Damages And Injunctive Relief Under Federal Antitrust Laws (Jury Demanded)". The complaint alleged, *inter alia*,

that Sea-Land had paid rebates in violation of the law. The complaint contains the following recitals and demand:

"Plaintiff States Steamship Company (hereinafter "States"), demanding trial by jury, complains and alleges as follows: . . . Pursuant to Rule 38(b), Fed.R.Civ.P., plaintiff hereby makes demand for jury trial." [Appendix I, pp. 1, 11].

(b) On June 22, 1977, Sea-Land filed its "Answer To Complaint And Counterclaim Of Defendant Sea-Land Service, Inc.", praying for dismissal of the complaint, treble damages and injunctive and declaratory relief. Sea-Land alleged, both by way of affirmative defense and in its counterclaim, that States was guilty of unclean hands and that it had violated the law by paying rebates and by issuing false denials of its own rebating practices. Sea-Land made no request for jury trial, [Appendix J].

(c) On July 12, 1977, States filed its "Reply To Counterclaim Of Defendant Sea-Land Service, Inc. And Counterclaim Of States Steamship Company (Jury Demanded)". States' answer denied, *inter alia*, that it had paid rebates or had issued false denials of the existence of rebates. The reply of States to the Sea-Land counterclaim contains the following demand:

"Pursuant to Rule 38(b), Federal Rules of Civil Procedure, States hereby makes demand for jury trial on all issues raised by the counterclaim of Sea-Land, States' reply thereto and the counterclaim of States." [Appendix K, p. 6].

C. Proceedings Incident to the Motion and Rule 42(b) Order for Non-Jury Trial

On July 24, 1978, Respondents Sea-Land and R. J. Reynolds Tobacco Company filed their motion:

" . . . for an order pursuant to Rules 16, 37(b), 41(b), and 56 of the Federal Rules of Civil Procedure and the inherent powers of the Court (1) dismissing the Amended Complaint of plaintiff Pacific Far East Line, Inc. ("PFEL"), dated December 17, 1976, or in the alternative, striking paragraphs 31(a), 31(b), 31(p), 31(r), and 31(s) of the Amended Complaint of PFEL, (2) dismissing the Complaint of States Steamship Company ("States"), dated March 21, 1977, or, in the alternative, striking paragraphs 16(a), 16(b), 16(c), 16(d), 16(p), and 16(s) of the Complaint of States, (3) dismissing the Counterclaim of PFEL, dated February 3, 1977, (4) dismissing the Reply to Counterclaim and Counterclaim of States, dated June 12, 1977, (5) directing that plaintiffs shall make no use of the issue of rebating by Sea-Land for any purpose, including rebuttal or impeachment, at the trial of these actions, (6) directing that it shall be taken as established at the trial of these actions that PFEL and States paid rebates to consignees and shippers which had been employing Sea-Land in the trade between the United States and the Far East during the statutory period applicable to each action, and that Sea-Land lost revenues in the cotton trade because of such rebating by PFEL, and (7) directing plaintiffs, jointly and severally, to pay to defendants, as a condition to any further prosecution of these actions by plaintiffs, the full cost of defendants, including reasonable attorney

neys' fees, of defendants' discovery on the issue of rebating by the plaintiffs."¹

The sole ground for respondents' motion to dismiss is an allegation made by them that petitioners were both guilty of unclean hands and had both, as a matter of uncontrollable fact, engaged in rebating as charged in the Sea-Land answers and counterclaims and that, therefore, the District Court is authorized to dispense with jury trial and to treat petitioners' denials of rebating, consistently made by them in their answers to the Sea-Land counterclaims, in deposition testimony and in answers to interrogatories as false and, pursuant to an "obstruction of justice theory", impose the ultimate sanction of dismissal.²

Subsequent to the filing by respondents of their July 24, 1978 motion, petitioners filed their papers and affidavits in opposition to the motion and put before the District Court those record facts which, as admitted by respondents, flatly contradict the suggestion of respondents that rebating by petitioners as charged in the Sea-Land answers and counterclaims had been factually established.³

On November 13, 1978, the District Court announced that, pursuant to Rule 42(b) of the Federal Rules of Civil Procedure, the Court would itself conduct a non-jury trial of

¹Motion for "Dismissal of Plaintiffs' Complaint and for Further Sanctions," filed July 24, 1978, p. 2.

²Motion for "Dismissal of Plaintiffs' Complaint and for Further Sanctions," filed July 24, 1978, pp. 2, 3.

³See for example, *inter alia*, plaintiffs' Affidavits and Certificates, filed August 21 and August 22, 1978; plaintiffs' Memorandum and Affidavits filed August 31, 1978; plaintiffs' Memorandum filed September 13, 1978; plaintiffs' memorandum filed September 15, 1978; and the memorandum of States Steamship Company and Pacific Far East Line, Inc. and exhibits thereto filed November 27, 1978.

the factually contested issue of rebating raised by the Sea-Land answers and counterclaims as recast by respondents in their July 24, 1978 motion to dismiss and formally ordered that:

"On December 15, 1978 at 1:30 the parties shall submit to the Court a joint pretrial order with regard to the hearing . . ."⁴

On November 16, 1978, the District Court entered its "Order Appointing Special Master" for the purpose of determining which of certain documents in the possession of respondents were relevant to the issue of rebating raised by the Sea-Land answers and counterclaims and ought to be produced to petitioners for use in the course of the non-jury trial ordered by the Court pursuant to F.R.Civ.P. Rule 42(b).⁵

On November 22, 1978, the Special Master returned his written report to the District Court, reciting the fact that respondents had moved for dismissal of petitioners' complaints and for sanctions on the ground that petitioners had falsely represented that they did not engage in rebating. The Special Master recited that, as to the factual issue of rebating raised both by the Sea-Land answers and counterclaims and by respondents' motion to dismiss, respondents were in possession of documents falling within the below-specified "relevant categories":

"(1) Documents tending to demonstrate that rebating was done only at lower levels; (2) documents tending

⁴Order, November 13, 1978, ¶ 17.

The Court had previously stated that with respect to the rebating issue that it would:

" . . . pass upon what I consider to be actual facts and properly admissible facts as though this were an actual trial on this very issue." (Hearing, October 18, 1978, TR. p. 70:20-22.)

⁵Appendix L.

to show that management and counsel were unaware that rebating was occurring; (3) documents that would rebut the fact of rebating; or (4) documents that would substantiate a good faith belief that no rebating was occurring.”⁶

On December 4, 1978, the District Court accepted the Report of the Special Master and the recommendations contained therein and ordered production to petitioners.⁷

The District Court elsewhere elaborated upon the procedure it intended to apply under F.R.Civ.P. Rule 42(b):

“[The Court]: You [respondents] will give consideration to the question of—I don’t know whether you will or not, of waiver of jury trial.”⁸

* * *

“[The Court]: . . . I expect you to come in with the equivalent of a pre-trial order on the trial of the factual issue involved in the motion to dismiss. . . . That means that you will get together and agree on a pre-trial order. . . . That order will comply with the usual order as though there were a full trial. . . . Of course, it’s limited to the limited issue I’m going to try; but the documents will have to be exchanged. Names of witnesses will have to be exchanged. And [sic] the same fashion, as though it were a trial.”⁹

On January 8, 1978, the District Court again announced that it fully intended to try the credibility of witnesses concerning the issue of rebating raised by the Sea-Land answers and counterclaims:

“The Court: The only thing you would be able to argue, when you get right down to it, in the Court of

⁶Report of Special Master, Appendix M, pp. 2, 3.

⁷Appendix N, p. 2.

⁸Hearing, October 18, 1979, TR. p. 208. Petitioners respectfully declined to waive jury trial.

⁹Hearing, November 3, 1978, TR. pp. 18, 19.

Appeals is your argument that the [District] Court is invading the province of the jury. That is what it is going to get down to.

“You can go through all kinds of exercises here, and it won’t make any difference, very frankly.

“[Counsel for Petitioners]: . . . As I understood it, the previous contention by defendants was that the issue that the [District] Court is to decide is, one, whether or not PFEL did any rebating prior to October of 1976, whether States did any rebating prior to March of 1977 and, two, whether or not PFEL officials fraudulently denied making payments during that time period and whether States officials fraudulently denied making payments.

“The Court: Let me make one or two observations just to resolve this for the purpose of appeal. I think I am going to permit you to state to the Court of Appeals that one of the issues involved in the motion to dismiss includes defendants’ contention that plaintiffs’ witnesses committed perjury in connection with the issue of rebating prior to October 15, 1976. I will just put that down as one of the issues.”¹⁰

¹⁰Hearing, January 8, 1978, TR. pp. 66, 67.

On January 9, 1979, the District Court entered its formal written order that it would conduct a non-jury trial on the issue of unclean hands and rebating raised by the Sea-Land answers and counterclaims including, *inter alia*, the contention by the defendants that:

“1(a) . . . plaintiffs PFEL and States have made representations to the Court and the parties which plaintiffs knew to be false. These false representations included the following:

“(ii) PFEL’s denial, in its reply dated December 22, 1976, of paragraphs 27 and 29 of Sea-Land’s

answer to amended complaint and counterclaim dated November 9, 1976;

"(iii) PFEL's denial, in its reply dated February 3, 1977, of paragraphs 38 and 40 of Sea-Land's answer to amended complaint and counterclaim dated January 7, 1977;

"(v) States' denial, in its reply served on July 12, 1977, of paragraphs 23 and 25 of Sea-Land's answer and counterclaim dated June 22, 1977."

The District Court and respondents recognize and agree that the fact of rebating by petitioners as alleged in the Sea-Land answers and counterclaims has not been established. Indeed, it is this precise issue of contested fact concerning which a non-jury trial has been ordered.¹²

Each of the other matters specified in the District Court's order of January 9, 1979 upon which respondents predicate their July 24, 1978 motion to dismiss is conceded to be inextricably tied to a resolution of the above-quoted issues of fact, *viz.*: the remaining issues under the order as to whether or not petitioners' answers to interrogatories;¹³

¹¹Order, January 9, 1979, §§ 1(a)(ii), (iii), (v). The denials of petitioners asserted by respondents as false have to do only with allegations made in the Sea-Land answers and counterclaims that petitioners paid rebates.

¹²The United States magistrate, in connection with his determination of a question of attorney-client privilege claimed by PFEL and referred to him by the District Court pursuant to 28 U.S.C. § 636(b)(1)(A), expressly found, after a full hearing, that rebating by PFEL as charged in the Sea-Land answer and counterclaim was "not a fact that is proven." Deposition, John I. Alioto, November 1, 1978, TR. p. 74:3-17.

¹³Order, January 9, 1979; (a)(vii)(viii), [petitioners' denials of rebating as alleged in the Sea-Land answers and counterclaims].

oral and written representations of counsel¹⁴ and deposition testimony¹⁵ were in fact false and the issue of whether petitioners in fact failed to produce documents evidentiary of or relevant to rebating¹⁶ necessarily depend for their resolution upon a determination of whether petitioners in fact engaged in rebating as alleged in the answers and counterclaims filed by respondent Sea-Land.

On January 9, 1979, respondents acted, pursuant to the District Court's Order of November 13, 1978 and Rule 235-7 of the Local Rules of the United States District Court for the Northern District of California, to file their formal pretrial statement in which they undertook to identify the numerous witnesses and tens of thousands of documents which they contend will evidence the fact of rebating by petitioners as alleged in the Sea-Land answers and counterclaims and upon which they intend to rely during the course of the non-jury trial of said issue.

On January 16, 1979, petitioners filed their application for writ of mandamus with the United States Court of Appeals for the Ninth Circuit requesting relief from the District Court's Order of January 9, 1979 directing that petitioners submit to a non-jury trial on the issue of rebating as

¹⁴Order, January 9, 1979; (a)(iv)(vi)(x)(xi), [recitation of petitioners' counsel as to state of the record concerning petitioners' denials of rebating as alleged in the Sea-Land answers and counterclaims].

¹⁵Order, January 9, 1979; (i)(ix), [petitioners' deposition testimony denying rebating and the existence of documents relevant to rebating as alleged in the Sea-Land answers and counterclaims].

¹⁶Order, January 9, 1979; (b)(i)-(iv); [omnibus requests for and alleged failure to produce documents dealing with rebating by petitioners as alleged in the Sea-Land answers and counterclaims].

alleged in the Sea-Land answers and counterclaims. On April 20, 1979, the United States Court of Appeals for the Ninth Circuit denied petitioners' application for a writ of mandamus without opinion.

REASONS FOR GRANTING WRIT

A writ of certiorari should issue from this Court in order to restore to petitioners their right to jury trial guaranteed to them by the Seventh Amendment to the Constitution of the United States and by Rules 38(a) and 42(b) of the Federal Rules of Civil Procedure.

A. The Propriety of Mandamus.

Mandamus is the proper procedure to correct an effort by a lower Court to deprive an antitrust plaintiff, or for that matter any litigant, of his Constitutional right to trial by jury. *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959); *Robine v. Ryan*, 310 F.2d 797 (2d Cir. 1962). Also see *Mach-Tronics v. Zirpoli*, 316 F.2d 820 (9th Cir. 1963). In *Beacon Theatres, supra*, the Supreme Court of the United States held that a mandamus proceeding to require the District Court to vacate certain orders alleged to deprive the petitioner of a jury trial of issues arising in the suit was proper:

“...because ‘Maintenance of the jury as a fact finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care’ (cite omitted).” 359 U.S. at 501.

The Court further held that:

“...we think the right to grant mandamus to require

jury trial where it has been improperly denied is settled.” 359 U.S. at 511.

In even the dissenting opinion, the minority said:

“There can be no doubt that a litigant is entitled to a writ of mandamus to protect a clear Constitutional or statutory right to a jury trial.” 359 U.S. at 511.

In addition, the Supreme Court in *Beacon Theatres* specifically noted that:

“...the right to trial by jury applies to treble damage suits under the antitrust laws and is, in fact, an essential part of the Congressional plan for making competition rather than monopoly the rule of trade. (cites omitted).” 359 U.S. at 504.

In its opinion in *Mach-Tronics v. Zirpoli, supra*, the Ninth Circuit vacated an order by the District Court staying the prosecution of a private antitrust suit. In doing so, the Court not only recognized that the:

“propriety of the remedy by way of mandamus cannot be questioned for it is an aid of our ultimate jurisdiction on appeal,” 316 F.2d at 834,

but also quoted from the *Beacon Theatres* case and noted the:

“federal public policy which stems from the provisions of the Seventh Amendment”
as exemplified in the Supreme Court’s decision in *Beacon Theatres*, 316 F.2d 828, 829.

B. The District Court’s Order of January 9, 1979 Improperly Denies Petitioners’ Right to Jury Trial.

Petitioners recognize the clear authority of a District Court to act under Rules 16 and 56 of the Federal Rules of Civil Procedure to simplify issues and/or to make deter-

minations as to the existence of a genuine issue of material fact.¹⁷

Petitioners are further mindful of the power of a District Court to entertain and grant a motion to dismiss on the basis of an admitted or uncontrovertible malfeasance.¹⁸

As noted, the District Court does not intend to employ the scheduled hearing in order to frame the issues as to which a trial shall proceed or make a determination as to whether there exists any genuine issues of material fact as provided in Rules 16 and 56 of the Federal Rules of Civil Procedure. To the contrary, the District Court has, in its order of January 9, 1979, and otherwise, stated that it intends to itself try and determine issues of fact raised by the pleadings and that it will do so in the face of petitioners' demand for jury trial. The announced course of

¹⁷Federal Rules of Civil Procedure, Rule 16(1), Rule 56(c).

¹⁸The following cases are submitted as illustrative of the exercise by a district court of its power to impose sanctions under Rule 37 of the Federal Rules of Civil Procedure:

United States v. Moss-American, Inc., 78 F.R.D. 214 (E.D. Wis. 1978): confession of intentional falsification of key evidence by an expert witness.

Fox v. Studebaker-Worthington, Inc., 516 F.2d 989 (8th Cir. 1975): confession and conviction of criminal eavesdropping on adverse party in civil litigation.

Trans World Airlines, Inc. v. Hughes, 332 F.2d 602 (2d Cir. 1964), cert. dismissed, 380 U.S. 248, 249 (1965): deliberate refusal to comply with valid court order requiring that a party submit to deposition.

Link v. Wabash Railroad Co., 291 F.2d 542 (7th Cir. 1961): extremely prolonged dilatory conduct and an admitted, uncontested and unexplained failure to obey a court order requiring appearance at a pretrial conference.

Rohauer v. Eastin-Phelan Corporation, 499 F.2d 120 (8th Cir. 1974): repeated refusal to obey court orders requiring appearance and refusal to obey a court order to appear and show cause concerning non-compliance with said orders.

action by the District Court clearly impinges upon petitioners' Constitutional right to a jury trial and violates Rules 38(a) and 42(b) of the Federal Rules of Civil Procedure.

In *Mascuilli v. United States*, 313 F.2d 764 (3rd Cir. 1963), the court in a wrongful death action entered a pre-trial order resolving the issue of liability. The Third Circuit held this to be error:

"We have time and again held that summary judgments cannot be granted when there is a genuine issue as to a material fact presented by either of the parties to an action; that pre-trial procedures are not intended to serve as a substitute for the regular trial of cases, nor are they intended to transfer to the pre-trial conference judge the traditional jury function of resolving factual issues." *Id.* at 767.

In *Lynn v. Smith*, 281 F.2d 501 (3rd Cir. 1960) the court made the same point while criticizing the trial court for taking oral testimony at the pretrial stage:

"In our view the receipt of 'oral statements by witnesses' in a pre-trial conference opens a 'Pandora's box in contemplation by those who so wisely conceived pre-trial procedures as a medium of expediting the trial of cases and not as a substitute for the regular trial process." *Id.* at 507.

In *Reynolds Metal Co. v. Metals Disintegrating Co.*, 176 F.2d 90 (3rd Cir. 1949), the Court noted:

"[T]he Federal Rules of Civil Procedure . . . were designed to facilitate correlation, and not duplication, between the pretrial and trial proceedings. . . . We are satisfied that pre-trial proceedings are intended to determine *what* the issues are, and *not* to invade the

trial function of *resolving* those issues. *Id.* at 92. (Emphasis added.)

It is absolutely clear in our case that, although respondents' July 24, 1978 motion to dismiss is phrased in terms of Rules 16, 37, 56 and Rule 41(b) of the Federal Rules of Civil Procedure, the District Court has by its January 9, 1979 order and record statements clearly announced that it intends to actually conduct a separate non-jury trial of the issue of rebating by petitioners as raised by the answers and counterclaims of respondent Sea-Land. The District Court has itself stated that there has never been an admission of rebating as alleged by Sea-Land¹⁹ and has stated that the key question of fact that it will proceed to try without a jury is whether or not petitioners engaged in rebating as charged. For example, with respect to PFEL the court stated:

"THE COURT: All right.

"Now, let's stop for a minute here. One of the questions, if not the crucial question is, did PFEL engage in rebating prior to October 15, 1976.

"[Counsel for Respondents]: Yes, sir.

"THE COURT: And your claim with relation to these three witnesses is that they did engage in such prior practices thereto?

"[Counsel for Respondents]: Yes.

"THE COURT: Now, I think it's reasonable to ask of the plaintiffs a very simple question:

"Do the plaintiffs contend that prior to October 15, 1976 they did not engage in rebating?

"[Counsel for Petitioners]: The plaintiffs did not."²⁰

It is undisputed from the explicit language of the District Court's order of January 9, 1979 and the statements of the District Court that, absent the relief prayed for herein, the District Court will, in the context of a separate trial ordered by it pursuant to Rule 42(b) of the Federal Rules of Civil Procedure, act to try and to itself determine issues of fact raised by the July 24, 1978 motion to dismiss which are not only common but identical to the issues of fact raised by the Sea-Land answers and counterclaims concerning which petitioners have properly demanded jury trial. The District Court has thus announced its embarkation upon a course of judicial procedure pursuant to which it will, after weighing the credibility of witnesses, make findings of fact which not only might but will, according to the District Court, operate either by way of *res judicata* or collateral estoppel so as to conclude the parties with respect thereto in any subsequent proceedings.²¹

The constitutionally protected right to trial by jury, when properly demanded and not waived, cannot be said to depend upon the particular rule purportedly relied upon by an adverse party or a District Court in support of an assertion that jury trial is not required. *A fortiori*, where a District Court unequivocally announces its intention to hold a separate non-jury trial of issues of fact which by

¹⁹In addition to the announced intention of the District Court to try the critical issue of fact raised by the Sea-Land answers and counterclaims, the District Court has espoused the view that its findings of fact will be binding upon the parties and that the findings will be upheld by the Court of Appeals unless, upon review of the record, the Court of Appeals finds that the District Court made a "really clear error" and would be upheld unless it could be shown that, with respect to its findings, the District Court was "grossly wrong". Hearing, October 19, 1978, TR. p. 247; Hearing, December 13, 1978.

²⁰Hearing, December 13, 1978, TR. p. 21, 22.

²⁰Hearing, October 18, 1978, TR. p. 235.

their very description are issues raised by the pleadings for which a jury demand has been made. The mere incantation of various of the Federal Rules of Civil Procedure or the "inherent powers" of a District Court is not sufficient to disallow a constitutionally protected right to jury trial of such issues.

The District Court's order of January 9, 1979 goes well beyond the proper judicial function of framing issues; it clearly requires that petitioners submit to a full trial on the issue of rebating raised by the Sea-Land answers and counterclaims and must be vacated.

CONCLUSION

For the reasons stated, the writ prayed for herein should be granted and the order of the Court of Appeals for the Ninth Circuit reversed.

Dated, San Francisco, California,
May 14, 1979

Respectfully submitted,

JOSEPH M. ALIOTO
LAWRENCE JOHN APPEL
JUDITH A. GENOVESE
ALIOTO & ALIOTO
Attorneys for Petitioners

(Appendices Follow)

Appendices

Appendix A

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United States District Court
Northern District of California

Pacific Far East Line, Inc.,
Plaintiff,
vs.

R. J. Reynolds Industries, Inc., R. J.
Reynolds Tobacco Company, R. J.
Reynolds Leasing Company, Sea-
Land Service, Inc., and McLean In-
dustries, Inc.,
Defendants.

No. C 76 2312 AJZ

States Steamship Company,
Plaintiff,
vs.
Sea-Land Service, Inc. and R. J. Reyn-
olds Tobacco Company,
Defendants.

No. C 77 0582 AJZ

[January 9, 1979]

ORDER DIRECTING EVIDENTIARY HEARING

1. On July 24, 1978, defendants R. J. Reynolds Tobacco Company and Sea-Land Service, Inc. ("Sea-Land") served and filed their Motion for Dismissal of Plaintiffs' Complaints and for Further Sanctions. This motion was brought pursuant to Rules 16, 37(b), 41(b), and 56 of the Federal Rules of Civil Procedure, and sought an order dismissing the amended complaint of plaintiff Pacific Far East Line, Inc. ("PFEL") and the complaint of plaintiff States Steamship Company ("States"), and granting further sanctions, including an order directing plaintiffs to pay the full cost to defendants, including reasonable attorneys' fees, of defendants' discovery on the issue of rebating by plaintiffs. In support of this motion, defendants make the following contentions:

Defendants contend that:

(a) From the commencement of these actions to and including the present time, plaintiffs PFEL and States have made representations to the Court and the parties which plaintiffs knew to be false. These false representations included the following:

(i) The testimony of John I. Alioto, then the President of PFEL, at the deposition of PFEL by John I. Alioto on November 29, 1976, that PFEL did not rebate (John I. Alioto Dep., Nov. 29, 1976, pp. 67-70, 76-77);

(ii) PFEL's denial, in its reply dated December 22, 1976, of paragraphs 27 and 29 of Sea-Land's answer and counterclaim dated November 9, 1976;

(iii) PFEL's denial, in its reply dated February 3, 1977, of paragraphs 38 and 40 of Sea-Land's answer to amended complaint and counterclaim dated January 7, 1977;

(iv) The representation of PFEL's counsel to the Court on February 28, 1977 that PFEL was not engaged in rebate practices (Feb. 28, 1977 Tr. 16);

(v) States' denial, in its reply served on July 12, 1977, of paragraphs 23 and 25 of Sea-Land's answer and counterclaim dated June 22, 1977;

(vi) The representation of plaintiff's counsel to the Court on July 1, 1977 that plaintiffs had denied making any payments (July 1, 1977 Tr. 20);

(vii) The answers of PFEL to defendants' first interrogatories, served and filed on January 16, 1978 pursuant to the Court's Order of December 20, 1977, and particularly PFEL's answer to Interrogatory 4;

(viii) The answers of States to defendants' first interrogatories, served and filed on January 16, 1978 pursuant to the Court's Order of December 20, 1977, and particularly States' answer to Interrogatory 4;

(ix) The testimony of Ralph Walter Kreuger II, then the Director of Planning, Research, and Development for States, at the deposition of States by Mr. Kreuger on January 23, 1978, that the only documents identifying persons who had paid monies to customers of States were documents relating to cargo claims and correction notices (Kreuger Dep., Jan. 23, 1978, pp. 5-6);

(x) Plaintiffs' papers in response to defendants' first motion for sanctions, dated February 13, 1978, and particularly plaintiffs' affidavits averring that it would have been pointless for plaintiffs to search their sales files for rebating documents because they knew there were no such documents in their sales files (Genovese Aff., Feb. 13, 1978, Ex. A, pp. 8-9, Ex. B, pp. 6-7; Coghlan Aff., Feb. 13, 1978, par. 4); and

(xi) Plaintiffs' papers in response to defendants' Motion for Dismissal of Plaintiffs' Complaints and for Further Sanctions and plaintiffs' papers in response to defendants' Motions to Overrule Claims of Attorney-Client Privilege.

Defendants contend that:

(b) Plaintiffs have willfully failed to comply with repeated orders of the Court directing plaintiffs to produce documents in plaintiffs' possession and that of their agents relating to plaintiffs' rebating practices. The orders of the Court which plaintiffs have failed to obey include the following:

- (i) Paragraphs 2 and 3 of the Court's Order of December 20, 1977;
- (ii) Paragraph 9 of the Court's Order of February 28, 1978;
- (iii) Paragraphs 2, 3, 4, 8, and 9 of the Court's Order of July 6, 1978; and
- (iv) Paragraph 7 of the Court's Order of July 27, 1978.

2. Plaintiffs PFEL and States have filed papers in response to defendants' Motion for Dismissal of Plaintiffs' Complaints and for Further Sanctions, and defendants have filed papers replying to plaintiffs' papers. In their papers, plaintiffs deny defendants' contentions as set forth in paragraph 1 above.

3. The Court is satisfied that the contentions advanced by defendants in support of their Motion for Dismissal of Plaintiffs' Complaints and for Further Sanctions are a proper subject for an evidentiary hearing by the Court.

4. Plaintiffs have asserted that the factual issues raised by plaintiffs' denial of the contentions advanced by defendants in support of their Motion for Dismissal of Plaintiffs' Complaints and for Further Sanctions are matters to be decided by the jury in a jury trial and not by the Court in an evidentiary hearing.

IT IS HEREBY ORDERED that, commencing on January 29, 1979, at 10:00 A.M., the Court will conduct an evidentiary hearing on defendants' Motion for Dismissal of Plaintiffs' Complaints and for Further Sanctions.

Dated this 9th day of
January, 1979

ALFONSO J. ZIRPOLI

Alfonso J. Zirpoli

United States District Judge

Appendix B

**United States Court of Appeals
for the Ninth Circuit**

**Pacific Far East Line, Inc. and States
Steamship Company,**

Petitioners,

vs.

**United States District Court for the
Northern District of California,**

Respondent,

**and Sea-Land Service, Inc., and R. J.
Reynolds Tobacco Company, et al.,
Real Parties in Interest.**

No. 79-7017
D.C. # 76-2312
Northern Calif.

ORDER

[April 20, 1979]

Before: SNEED and ANDERSON, Circuit Judges.

**Upon due consideration, the petition for writ of manda-
mus is denied.**

Appendix C

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United States District Court
Northern District of California

No. C76 2312 AJZ

Pacific Far East Line, Inc., Plaintiff,
vs.
R. J. Reynolds Tobacco Company,
McLean Industries, Inc., and Sea-
Land Service, Inc., Defendants.

[Filed Oct. 15, 1976]

**COMPLAINT FOR DAMAGES AND INJUNCTIVE
RELIEF UNDER FEDERAL
ANTITRUST LAWS
(Jury Demanded)**

Plaintiff Pacific Far East Lines, Inc. (hereinafter
"PFEL"), demanding trial by jury, complains and alleges
as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted against the named defendants under Sections 4 and 16 of the Clayton Antitrust Act (15 USC § 15 and 26) to secure damages for and injunctive relief against the violations by the named defendants of Sections 1 and 2 of the Sherman Antitrust Act (15 USC § 1 and 2) and Sections 2(c) and 7 of the Clayton Antitrust Act (15 USC § 13(c) and 18).

2. The defendants transact business, maintain an office and are found within the Northern District of California. Defendants are within the jurisdiction of this Court for the purpose of service of process. The interstate trade and commerce hereinafter described is in part carried on, and the acts done in violation of the antitrust laws hereinafter alleged, were performed, in part, within the Northern District of California.

II

THE PARTIES

3. The plaintiff PFEL is a Delaware corporation with its principle place of business in San Francisco, California. PFEL is engaged in the operation of freight transportation by American flag vessels to the Far East and the Persian Gulf. It utilizes LASH and Ro-Ro vessels from the West Coast and the East Coast.

4. The Defendant R. J. Reynolds Tobacco Company ("Reynolds") is a New Jersey corporation with its principle place of business in Winston-Salem, North Carolina. Reynolds is one of the nation's largest industrial corpora-

tions in sales and assets, reporting, in 1975, net sales in the amount of \$4,837,643,000 and total assets in the amount of \$3,294,322,000. Reynolds is the largest manufacturer of tobacco products in the United States. Reynolds is a significant exporter of cigarettes and is the largest importer of tobacco leaf into the United States. Through a series of acquisitions and mergers beginning about 1963, Reynolds has expanded its activities into areas other than tobacco. At least one of these acquisitions was the subject of an action brought by the United States under Section 7 of the Clayton Act which, on or about September, 1969, Reynolds was ordered to divest. In one of its largest acquisitions, Reynolds, on or about May, 1969, acquired the business and assets of the predecessor of the defendant McLean Industries, Inc. ("McLean").

5. The defendant McLean is a New York corporation and a wholly-owned subsidiary of Reynolds. McLean is the successor to the assets and the business of a corporation of the same name that was acquired by Reynolds on or about May, 1969. McLean is and was a holding company operating through a number of wholly-owned subsidiaries, the principle one of which, the defendant Sea-Land Service, Inc. ("Sea-Land"), accounted for most of the revenues of McLean's predecessor. McLean is one of the nation's largest transportation companies in sales and assets.

6. The defendant Sea-Land is a Delaware corporation which is a wholly-owned subsidiary of McLean. Sea-Land operates the largest containerized freight transportation system in the world, utilizing containers, containerships, chassis and related terminal equipment. Sea-Land operates in the domestic trade of the United States and in foreign

commerce. Between 1964 and 1975 Sea-Land's revenues from its containership operation rose from \$84.7 million to approximately \$768 million.

IV CO-CONSPIRATORS

7. Certain corporations, persons, or entities participated in and made statements and performed acts in furtherance of the violations of the antitrust laws alleged in this Complaint.

V TRADE AND COMMERCE

8. PFEL and Sea-Land are, and at all times relevant herein were, engaged in interstate and foreign commerce in the operation of their freight vessels throughout the world.

9. Sea-Land is on competitive routes against American Export, States Line, Waterman Steamship Line, Central Gulf, Prudential, APL, Lykes Line, and PFEL. The conspiracy and attempt to monopolize and the actual monopolization hereinafter alleged together with the conspiracies and contracts in restraint of trade, the commercial bribes and illegal rebates and acquisition of assets, were directed against all of these companies for the purpose of forcing them to lose substantial amounts of money while Sea-Land was subsidized in its below-cost operation by Reynolds, which in turn received huge subsidies from the United States Government through agricultural support programs and IRS tax shelter financing.

10. The trade and commerce involved herein are the transportation by common carriers by water in foreign

commerce of freight in containerships, in United States-flag containerships, LASH vessels and Ro-Ro vessels, and on various trade routes in such commerce.

11. A common carrier by water engages in water-borne transportation of passengers or property, and makes its services available to the general public at published tariffs on a first-come, first-served basis, operating regularly scheduled sailings on designated trade routes. A common carrier by water is to be distinguished from what is commonly called an ocean tramp, which engages in contracted water-borne transportation services for specific customers at negotiated rates. A common carrier by water in foreign commerce makes its regularly scheduled sailings on designated trade routes between United States ports and ports in foreign countries or in territories or possessions of the United States.

12. All military cargoes shipped by the Department of Defense or related agencies to foreign countries must be carried in vessels operating under the United States flag. All mails of the United States shipped to foreign countries must be carried on vessels operating under the United States flag.

14. Since 1966, when containerships and containerized shipping were introduced onto foreign trade routes on a major scale, there has been a radical transformation of world trade, the nature of port operations and the composition of the world's fleet of cargo ships. Containerships and LASH ships are rapidly replacing breakbulk ships on most key world trade routes.

15. American companies have taken the lead in the movement toward containerized, LASH and Ro-Ro transportation systems. Sea-Land operates the largest fleet of containerships in the world, with 31.6% of all containerships operating in foreign commerce and 55% of all containerships operating in foreign commerce under the United States flag. Sea-Land's containerships represent one-third of all containership capacity in foreign commerce and one-half of all United States-flag containership capacity in foreign commerce.

VI

OFFENSES CHARGED

16. Commencing at least as early as 1964 and continuing to the present, Sea-Land and its parent McLean have attempted to monopolize, and are monopolizing the trade and commerce hereinabove described in violation of Section 2 of the Sherman Act, to the injury of PFEL's business and property.

17. Commencing at least as early as 1964 and continuing down to the present, Sea-Land, McLean, and Reynolds have combined and conspired with one another and with others to monopolize and to restrain the trade and commerce hereinabove described in violation of Sections 1 and 2 of the Sherman Act, to the injury of PFEL's business and property.

18. Commencing at a time unknown to plaintiffs, but beginning at least as early as 1971, and continuing up to at least 1975, Sea-Land paid \$19 million to buyers, agents of buyers and other intermediaries acting for or on behalf of buyers, of shipping services in bribes and other illegal re-

bates in violation of Section 2(c) of the Clayton Act, to the injury of PFEL's business and property.

19. Within the last year, Sea-Land has acquired by purchase from a competitor certain LASH vessels to be used in the Middle East trade routes, which acquisition lessens competition and tends to create a monopoly in violation of Section 7 of the Clayton Act, to the injury of PFEL's business and property.

20. The said monopoly, conspiracy and attempt to monopolize, and conspiracies and bribes and illegal rebates and illegal acquisitions in restraint of trade have consisted of a concert of action by defendants to do the following things, among others:

- (a) Operate below cost from hidden subsidies supplied by Reynolds to Sea-Land;
- (b) Arrange intercompany accounting procedures between Reynolds and Sea-Land to conceal Sea-Land's below-cost operations;
- (c) Subsidize Sea-Land's below-cost predatory tactics from the huge interstate and foreign treasuries of Reynolds, supplemented in turn by United States Government subsidies, direct and indirect, to Reynolds;
- (d) Threaten to engage and actually engage in litigation, interferences and protests in courts and before government bureaus and agencies against American-flag operators for anti-competitive purposes and for the intended purpose of causing unnecessary litigation expenses and delays in the granting of governmental rights and licenses to American-flag competitors;

- (e) Pay bribes and illegal political contributions at home and abroad using executives named Peoples, Wade and Smith as front men for the chief executive officers in order, among other things, to secure preferential berthing rights in the Persian Gulf.
- (f) Threaten to adopt and adopt rebate policies to lower the revenues of American-flag competitors:
- (g) Acquire competitive companies for the purpose of restraining and monopolizing trade;
- (h) Over-tonnage trade for the purpose of driving American-flag competitors to bankruptcy;
- (i) Utilize steamship conferences for the purpose of acting in concert against competitors like PFEL;
- (j) Engage in predatory acts of commercial espionage, interference, and pricing against American-flag competitors;
- (k) Acquire substantial interests in the oil industry for the purpose of gaining competitive leverage over American-flag competitors;
- (l) Pay bribes and other illegal rebates to buyers of shipping services; and
- (m) Maintain an off-book slush fund of cash from which they intended to pay and did pay commercial bribes and other illegal rebates.

21. The defendants did those things which as hereinabove alleged they conspired and agreed to do.

EFFECTS OF THE VIOLATIONS

- 22. The intent and purpose of the foregoing violations of the law were to damage and destroy Sea-Land's American-flag competition so that Sea-Land would achieve a monopoly position in shipping operations between the United States and the world.
- 23. PFEL, beginning in August of 1974, has achieved efficiencies and management skills which gave it a better commercial position in the Far East and Persian Gulf. It has already suffered substantial damages from the predatory actions hereinabove alleged, but nevertheless succeeded in getting an advantageous beginning position by acquiring rights to routes to the Persian Gulf before the full potential of that trade and commerce was fully recognized. Upon learning of PFEL's position in the Persian Gulf, defendants' executives formulated a plan to monopolize the trade and commerce between the Persian Gulf, the Orient and the United States and reduced that plan to writing in a secret, confidential interoffice memorandum which is attached hereto as Exhibit A and incorporated herein by this reference. Exhibit A contains an admission that the plan is a "monopolistic foreign investment". Unless this Court intervenes, the said plan will be put into effect and will drive plaintiff PFEL and other American-flag carriers out of business in the Persian Gulf. Implementation of the plan set out in Exhibit A will be carried out by various predatory acts including without limitation: commercial bribery, commercial espionage, interference with contractual relations, below-cost operations, and baseless litigation and protests in the courts and before government agencies.

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that:
 - (a) Defendants have attempted to monopolize and are monopolizing the trade and commerce hereinabove described, in violation of Section 2 of the Sherman Act;
 - (b) Defendants have combined and conspired with one another and with others to monopolize and to restrain the trade and commerce hereinabove described, in violation of Sections 1 and 2 of the Sherman Act;
 - (c) The acquisition by defendant Reynolds of the business and assets of McLean is in violation of Section 7 of the Clayton Act;
 - (d) The acquisition by defendants of the business and assets of U. S. Lines is in violation of Section 7 of the Clayton Act;
 - (e) The contemplated acquisition by defendant Reynolds of a substantial position in the oil industry is a violation of Section 7 of the Clayton Act; and
 - (f) Defendants have paid commercial bribes and illegal rebates in violation of Section 2(e) of the Clayton Act.
2. That defendants and each of them be permanently enjoined from performing or carrying out each and every one of the unlawful acts, practices, contracts, combinations and conspiracies alleged in this complaint, including the plan to enter into a "monopolistic investment" in the Persian Gulf.
3. That Reynolds be ordered to divest itself of all ownership interest in McLean and Sea-Land.

4. That plaintiff recover its damages, trebled as required by Section 4 of the Clayton Act;
5. That plaintiff be awarded reasonable attorneys' fees and its costs of litigation as required by Section 4 of the Clayton Act; and
6. That plaintiff be granted such other and further relief as the Court may deem just and proper.

LAW OFFICES OF JOSEPH L. ALIOTO
 JOSEPH L. ALIOTO
 JOSEPH M. ALIOTO
 JUDITH A. GENOVESE

By /s/ JOSEPH M. ALIOTO

Joseph M. Alioto
Attorney for Plaintiff

Pursuant to Rule 38(b), Fed.R.
 Civ.P., plaintiff hereby makes de-
 mand for jury trial.

Appendix D

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In the United States District Court
For the Northern District of California

No. C76 2312 AJZ

Pacific Far East Line, Inc., **Plaintiff,**
vs.
R. J. Reynolds Tobacco Company, **Defendants.**
McLean Industries, Inc., and Sea-
Land Service, Inc., **Defendants.**

ANSWER AND COUNTERCLAIM
OF DEFENDANT SEA-LAND
SERVICE, INC.

Defendant Sea-Land Service, Inc. ("Sea-Land"), for its answer to the Complaint herein, admits, denies and alleges as follows:

1. Denies each and every allegation contained in paragraph 1, except admits and alleges that plaintiff purports to bring this action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26.

2. Denies each and every allegation contained in paragraph 2, except admits and alleges that Sea-Land is qualified to do business in the State of California and is found within the Northern District of California.

3. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 3, except admits and alleges upon information and belief that plaintiff Pacific Far East Line, Inc. ("PFEL") is a Delaware corporation with its principal place of business in San Francisco, California and is engaged in the operation of freight transportation by American flag vessels to the Far East and the Persian Gulf.

4. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 4, except admits and alleges that defendant R. J. Reynolds Tobacco Company ("Reynolds Tobacco") is a New Jersey corporation with its principal place of business in Winston-Salem, North Carolina.

5. Denies each and every allegation contained in paragraph 5, except (a) admits and alleges that defendant McLean Industries, Inc. ("McLean") is a corporation organized under the laws of the State of Delaware, (b) admits and alleges that McLean is a holding company with a number of wholly-owned subsidiaries, including Sea-Land, (c) admits and alleges that Sea-Land accounted for most

of the revenues of McLean's predecessor, (d) admits and alleges that McLean is the successor to the assets and business of a corporation of the same name that was acquired by Reynolds Tobacco in May 1969, and (e) is without knowledge or information sufficient to form a belief as to the truth of the allegation that McLean is one of the nation's largest transportation companies in sales and assets.

6. Denies each and every allegation contained in paragraph 6, except (a) admits and alleges that Sea-Land is a corporation organized under the laws of the State of Delaware and is a wholly-owned subsidiary of McLean, (b) is without knowledge or information sufficient to form a belief as to the truth of the allegation that Sea-Land operates the largest containerized freight transportation system in the world utilizing containers, containerships, chassis and related terminal equipment, (c) admits and alleges that Sea-Land operates in the domestic trade of the United States and in foreign commerce, and (d) admits and alleges that in 1964 Sea-Land's revenues from its containership operation were \$83,905,646 and that in 1975 Sea-Land's revenues from its containership operation were \$759,423,098.

7. Denies each and every allegation contained in paragraph 7.

8. Denies each and every allegation contained in paragraph 8, except (a) admits and alleges upon information and belief that PFEL engages in foreign commerce, and (b) admits and alleges that Sea-Land engages in interstate and foreign commerce.

9. Denies each and every allegation contained in paragraph 9, except admits and alleges that Sea-Land operates competitive services to ports also served by one or more of the carriers named in paragraph 9 as well as other carriers.

10. Denies each and every allegation contained in paragraph 10.

11. Denies each and every allegation contained in paragraph 11.

12. Denies each and every allegation contained in paragraph 12.

13. There is no paragraph 13.

14. Denies each and every allegation contained in paragraph 14, except admits and alleges that since 1966 there have been changes in world trade, the nature of port operations and the composition of the world's fleet of cargo ships.

15. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 15, except admits and alleges that American companies have been active in the movement toward containerized, LASH and Ro-Ro transportation systems.

16. Denies each and every allegation contained in paragraph 16.

17. Denies each and every allegation contained in paragraph 17.

18. Denies each and every allegation contained in paragraph 18, except admits and alleges that a corporate investigation has concluded that more than \$19 million in possibly illegal rebates has been paid by Sea-Land to shippers, consignees and forwarding agents during the period 1971 through 1975.

19. Denies each and every allegation contained in paragraph 19.

20. Denies each and every allegation contained in paragraph 20, except admits and alleges that Sea-Land paid possibly illegal rebates as referred to in paragraph 18 above which were paid in part from off-book funds.

21. Denies each and every allegation contained in paragraph 21.

22. Denies each and every allegation contained in paragraph 22.

23. Denies each and every allegation contained in paragraph 23.

FIRST AFFIRMATIVE DEFENSE

24. Plaintiff is barred from receiving relief from this Court by the doctrine of unclean hands.

SECOND AFFIRMATIVE DEFENSE

25. The claims asserted in the Complaint herein are barred in whole or in part by the applicable statute of limitations, Section 4B of the Clayton Act, 15 U.S.C. § 15b.

THIRD AFFIRMATIVE DEFENSE

26. The claims asserted in the complaint herein are in whole or in part within the primary jurisdiction of the

Federal Maritime Commission and are therefore not properly before this Court at this time.

FOURTH AFFIRMATIVE DEFENSE

27. Upon information and belief, PFEL, acting directly or through agents and others, has knowingly paid, authorized and aided and abetted the payment of rebates and other payments in contravention of PFEL's applicable conference agreements and PFEL's applicable tariffs to shippers, consignees, forwarding agents and other buyers of PFEL's services and to persons employed by shippers, consignees, forwarding agents and other buyers of PFEL's services. Upon information and belief, PFEL, acting directly or through agents and others, has also engaged in, authorized and aided and abetted other practices in contravention of PFEL's applicable conference agreements and tariffs. Upon information and belief, such payments and practices began before 1968 and are still continuing. Upon information and belief, such payments and practices have been made for the purpose and with the effect of disadvantaging competitors of PFEL, including Sea-Land. Upon information and belief, PFEL has knowingly failed to disclose, or has issued false denials of, the existence of such payments and practices to the Maritime Administration of the United States Department of Commerce in connection with PFEL's application for and receipt of operating differential subsidy ("ODS") payments from the United States Government, as well as to the Federal Maritime Commission, the Securities and Exchange Commission, other agencies of the United States Government and the general public. Upon information and belief, such failure

to disclose and such denials were done for the purpose and with the effect of receiving ODS payments and of disadvantaging competitors of PFEL, including Sea-Land.

28. In view of the facts alleged in paragraph 27, any acts of Sea-Land complained of herein were performed in self-defense against illegal and fraudulent acts of PFEL and others and were performed without any purpose or effect of restraining competition. Such acts of Sea-Land did not violate any of the United States antitrust laws.

COUNTERCLAIM

29. Sea-Land realleges each and every allegation contained in paragraph 27.

30. The acts of PFEL in failing to disclose, or in issuing false denials of, the existence of rebates and other payments and other practices alleged in paragraphs 27 and 29 above constitute violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, as well as of other Federal statutes. The acts of PFEL alleged in paragraphs 27 and 29 above also constitute unlawful fraud and intentional infliction of business injury upon Sea-Land.

31. The unlawful acts of PFEL alleged in paragraphs 27 and 29 above injured and are continuing to injure Sea-Land in its business and property.

WHEREFORE, defendant Sea-Land Service, Inc. ("Sea-Land") prays judgment against plaintiff Pacific Far East Line, Inc. ("PFEL"):

1. Dismissing the Complaint;
2. Adjudging and declaring that the acts of PFEL alleged in paragraphs 27 and 29 above constitute violations

of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and enjoining and restraining PFEL and all persons acting in concert and participation with PFEL from engaging in any such acts;

3. Awarding Sea-Land treble the amount of its damages sustained by reason of the acts alleged in paragraphs 27 and 29 above, as required by Section 4 of the Clayton Act, 15 U.S.C. § 15;

4. Awarding Sea-Land its costs of litigation and reasonable attorney's fees, as required by Section 4 of the Clayton Act, 15 U.S.C. § 15; and

5. Granting Sea-Land such other and further relief as may be just and proper.

Dated: November 9, 1976

MOSES LASKY
 CHARLES B. COHLER
 BROBECK, PHLEGER & HARRISON
 LAWRENCE E. WALSH
 RICHARD E. NOLAN
 DAVIS, POLK & WARDWELL

By /s/ CHARLES B. COHLER

CHARLES B. COHLER

*Attorneys for Defendant
 Sea-Land Service, Inc.*

Appendix E

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 Telephone: (415) 434-2100
 Attorneys for Plaintiff

United States District Court
 Northern District of California

No. C 76-2312 AJZ

Pacific Far East Lines, Inc., Plaintiff,
 vs.
 R. J. Reynolds Industries, Inc., R. J.
 Reynolds Tobacco Company, R. J.
 Reynolds Leasing Company, Sea-
 Land Service, Inc., and McLean
 Industries, Inc., Defendants.

[Filed Dec. 17, 1976]

AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF UNDER FEDERAL ANTITRUST LAWS (Jury Demanded)

Plaintiff Pacific Far East Lines, Inc. (hereinafter "PFEL"), demanding trial by jury, complains and alleges as follows:

I
JURISDICTION AND VENUE

1. This Amended Complaint is filed and these proceedings are instituted against the named defendants under Sections 4, 12 and 16 of the Clayton Act (15 U.S.C. §§ 15, 22 and 26) to secure damages for and injunctive relief against the violations by the named defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) and Sections 2(e), 3 and 7 of the Clayton Act (15 U.S.C. §§ 13(e), 14 and 18).

2. Defendants, and each of them, transact business, maintain an office, have agents and employees, and are found within the Northern District of California. Defendants, and each of them, are within the jurisdiction of this Court for the purpose of service of process. The interstate trade and commerce hereinafter described is in part carried on, and the acts done in violation of the antitrust laws hereinafter alleged, were performed, in part, within the Northern District of California.

3. Defendant R. J. Reynolds Industries, Inc. [hereinafter "INDUSTRIES"] owns and controls one hundred per cent (100%) of the stock of R. J. Reynolds Tobacco Company [hereinafter "TOBACCO"], Sea-Land Service, Inc. [hereinafter "SEA-LAND"], McLean Industries, Inc. [hereinafter "MCLEAN"], R. J. Reynolds Leasing Company [hereinafter "LEASING"], American Independent Oil Company [hereinafter "AMINOIL"], R. J. R. Foods, Inc., R. J. Reynolds Tobacco International, S.A., MacDonald Tobacco, Inc. and R. J. Reynolds Tobacos do Brasil Ltda.

4. SEA-LAND and TOBACCO have, since 1970, operated as agents-in-fact for INDUSTRIES within the Northern District of California and elsewhere.

5. Defendant INDUSTRIES has, through its officers and special staff, provided overall guidance and coordination for the business of TOBACCO and SEA-LAND on a regular basis since 1970.

6. Since 1970, SEA-LAND has reported and consulted monthly and, at times, daily to and with INDUSTRIES on the business operations of SEA-LAND, including the business of SEA-LAND within the Northern District of California.

7. Since 1970, TOBACCO has reported and consulted monthly, and, at times, daily to and with INDUSTRIES on the business operations of TOBACCO, including the business operations of TOBACCO within the Northern District of California.

8. INDUSTRIES has for each year since 1970 prepared and approved an annual operational budget which includes the required or anticipated business expenditures for all of its subsidiary companies, including SEA-LAND and TOBACCO, and which includes the business expenditures required or anticipated by SEA-LAND and TOBACCO for the conduct of their business in the Northern District of California.

9. Each of the subsidiary companies of INDUSTRIES, including SEA-LAND and TOBACCO, are operationally financed directly by INDUSTRIES on an annual basis.

10. INDUSTRIES has, since 1970, regularly acted within the Northern District of California to provide SEA-LAND and TOBACCO with credit, legal, accounting, financial, public relations and other services perceived by SEA-LAND, TOBACCO, and INDUSTRIES as necessary to the business of SEA-LAND and TOBACCO within said District.

11. INDUSTRIES has travelled to San Francisco, California on a regular basis since 1970 to consult with security analysts and others to the end of furthering the business opportunities and profits of INDUSTRIES and its subsidiary companies.

12. INDUSTRIES financed and maintains a direct financial interest in and exercises control over ships and containers employed and berthed in the Northern District of California.

13. Since 1970, INDUSTRIES has acted to purchase ships and containers located in the Northern District of California and, in that connection, has travelled into the Northern District of California.

14. Since 1972, the business of INDUSTRIES has been, in part, to directly provide policy and operational guidance, money, expertise and other things and services to its subsidiaries, including SEA-LAND and TOBACCO, for business conducted within the Northern District of California.

15. Since 1972, INDUSTRIES has travelled into the Northern District of California to observe the business functions of SEA-LAND and TOBACCO and to consult

with management and employees of SEA-LAND and TOBACCO and to inspect and appraise assets in which it maintains an economic interest.

16. INDUSTRIES particularly characterized its business operations in its 1975 100th Anniversary Report to Shareholders as follows: "Under the holding company structure, Reynolds Industries would provide coordinated and centralized financial, administrative, personnel, public relations and other services, as well as overall management, for the subsidiaries."

II

THE PARTIES

17. PFEL is a Delaware corporation with its principal place of business in San Francisco, California. PFEL is engaged in the operation of freight transportation by American Flag vessels to the Far East and the Persian Gulf. It utilizes LASH and Ro-Ro vessels from the West Coast and the East Coast.

18. R. J. Reynolds Industries, Inc. is a corporation which, since 1970, has been engaged as a manufacturer and seller of tobacco, food and packaging products, and as a producer, refiner and seller of oil and oil products and has, since 1970, continuously been engaged in the business of shipping freight by sea and by land in interstate and in foreign commerce.

19. R. J. Reynolds Tobacco Company is a New Jersey corporation with its principal place of business in Winston-Salem, North Carolina and is the largest manufacturer of tobacco products in the United States. Through a series of

acquisitions and mergers beginning about 1963, R. J. Reynolds Tobacco Company has expanded its activities into areas other than tobacco. At least one of these acquisitions was the subject of an action brought by the United States under Section 7 of the Clayton Act which, on or about September, 1969, R. J. Reynolds Tobacco Company was ordered to divest. In one of its largest acquisitions, R. J. Reynolds Tobacco Company in May, 1969, acquired the business and assets of the predecessor of the defendant McLean Industries, Inc.

20. McLean Industries, Inc. is a Delaware corporation and a wholly-owned subsidiary of INDUSTRIES. McLEAN is the successor to the assets and the business of a corporation of the same name that was acquired by TOBACCO in May, 1969. McLean Industries, Inc. is and was a holding company operating through a number of wholly-owned subsidiaries, the principle one of which, Sea-Land Service, Inc., accounted for most of the revenues of McLean's predecessor.

21. Sea-Land Service, Inc. is a Delaware corporation which is a wholly-owned subsidiary of McLean Industries, Inc. Sea-Land Service, Inc. operates the largest containerized freight transportation system in the world, utilizing containers, containerships, chassis and related terminal equipment. Sea-Land Service, Inc. operates in the domestic trade of the United States and in foreign commerce. Between 1964 and 1975, the revenues from the containership operation of Sea-Land Service, Inc. rose from \$84.7 million to approximately \$768 million.

21(a). R. J. Reynolds Leasing Company is a wholly-owned subsidiary corporation of INDUSTRIES and leases ships and containers to SEA-LAND.

III CO-CONSPIRATORS

22. Certain corporations, persons or entities participated in and made statements and performed acts in furtherance of the violations of the antitrust laws alleged in this Amended Complaint.

IV TRADE AND COMMERCE

23. PFEL and SEA-LAND are, and at all times relevant herein were, engaged in interstate and foreign commerce in the operation of their freight vessels throughout the world.

24. SEA-LAND has directly competed against PFEL on various routes since 1965 and, in the course of that competition, has in the past wrongfully employed and does now wrongfully employ investment tax credits and other preferential tax treatment received by INDUSTRIES and subsidiaries of INDUSTRIES against and to the competitive detriment of plaintiff.

25. The trade and commerce involved herein are the transportation by common carriers by water in foreign commerce of freight in containerships, in United States-flag containerships, LASH vessels and Ro-Ro vessels, and on various trade routes in such commerce.

26. A common carrier by water engages in water-borne transportation of passengers or property, and makes its

services available to the general public at published tariffs on a first-come, first-served basis, operating regularly scheduled sailings on designated trade routes. A common carrier by water is to be distinguished from what is commonly called an ocean tramp, which engages in contracted water-borne transportation services for specific customers at negotiated rates. A common carrier by water in foreign commerce makes its regularly scheduled sailings on designated trade routes between United States ports and ports in foreign countries or in territories or possessions of the United States.

27. All military cargoes shipped by the Department of Defense or related agencies to foreign countries must be carried in vessels operating under the United States flag. All mails of the United States shipped to foreign countries must be carried on vessels operating under the United States flag.

28. Since 1966, when containerships and containerized shipping were introduced onto foreign trade routes on a major scale, there has been a radical transformation of world trade, the nature of port operations and the composition of the world's fleet of cargo ships. Containerships and LASH ships are rapidly replacing breakbulk ships on most key world trade routes.

29. American companies have taken the lead in the movement toward containerized, LASH and Ro-Ro transportation systems. SEA-LAND operates the largest fleet of containerships in the world, with 31.6% of all containerships operating in foreign commerce and 55% of all containerships operating in foreign commerce under the

United States flag. SEA-LAND's containerships represent one-third of all containership capacity in foreign commerce and one-half of all United States-flag containership capacity in foreign commerce.

V

OFFENSES CHARGED

30. Defendants and each of them have, since 1964 and continuing to the date of this Amended Complaint, performed acts and contracted, combined and conspired between and among themselves and with others to unreasonably restrain the trade and commerce hereinabove described and have contracted, combined and conspired between and among themselves and with others to monopolize and have attempted to monopolize and monopolized the trade and commerce hereinabove described, all in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and Sections 2(c), 3 and 7 of the Clayton Act (15 U.S.C. §§ 13(c), 14 and 18).

31. The acts, contracts, combinations, conspiracies and violations alleged at Paragraph 30 above have consisted, in part, of the following acts, practices and courses of conduct, all performed and undertaken by defendants, and each of them, with the express and predatory purpose and intent of eliminating the actual and potential competition of plaintiff and injuring plaintiff in its business and property:

(a) Unlawfully paying nineteen million dollars (\$19,000,000.00) in rebates to shippers, consignees and forwarding agents during the period 1971 through 1975;

(b) Unlawfully paying more than twenty million dollars (\$20,000,000.00) in excess commissions to shipping agents, buyers, and agents of buyers during the period 1971 through 1975 and failing to disclose the fact of said payments;

(c) Acquiring by purchase from a competitor certain LASH vessels for use in trade with the Middle East;

(d) Leasing and selling goods, equipment, supplies and other commodities, including shipping containers, and fixing the price charged therefor on the condition that the lessees and purchasers of said goods, supplies and other commodities not use or deal in the goods, equipment, supplies and commodities of competitors of defendants, including plaintiff and on the further condition that said goods, supplies and other commodities not be sold to or used by competitors of defendants, including plaintiff;

(e) Agreeing to operate and operating R. J. Reynolds Leasing Company, Sea-Land Service, Inc. and other subsidiaries of INDUSTRIES below cost;

(f) Filing a counterclaim in this action and seeking to disqualify counsel for plaintiff from the further prosecution of this action;

(g) Arranging and following intercompany accounting procedures for the purpose of concealing the fact of below-cost operation by SEA-LAND, LEASING and other subsidiaries of INDUSTRIES;

(h) Subsidizing SEA-LAND's below-cost predatory tactics from the huge interstate and foreign treasuries of INDUSTRIES supplemented in turn by United States Government subsidies, direct and indirect, to INDUSTRIES;

(i) Threatening to engage and actually engaging in litigations, interferences and protests in courts and before government bureaus and agencies against America-flag operators for anti-competitive purposes and for the intended purpose of causing unnecessary litigation expenses and delays in the granting of governmental rights and licenses to American-flag competitors;

(j) Paying unlawful bribes and political contributions in the United States and elsewhere in an effort to increase monies and profits available to defendants for purposes of competing against plaintiff and to unlawfully affect shipping regulations, tariffs and laws and to secure preferential berthing rights in the Persian Gulf and elsewhere;

(k) Agreed to deal reciprocally between and among themselves to the intended detriment of plaintiff;

(l) Threatening to adopt and adopting rebate policies to lower the revenues of American-flag competitors;

(m) Acquiring competitive companies for the purpose of restraining and monopolizing trade;

- (n) Over-tonnage trade for the purpose of driving American-flag competitors to bankruptcy;
- (o) Utilizing steamship conferences for the purpose of acting in concert against competitors, including plaintiff;
- (p) Engaging in predatory acts of commercial espionage, interference, and pricing against American-flag competitors;
- (q) Acquiring substantial interests in the oil industry for the purpose of gaining competitive leverage over American-flag competitors;
- (r) Paying bribes and other illegal rebates to buyers of shipping services;
- (s) Maintaining off-book slush funds of cash from which they intended to pay and did pay commercial bribes and other illegal rebates;
- (t) Refusing to promptly produce the report of the Audit Committee of the Board of Directors of INDUSTRIES in response to request therefor made by plaintiff;
- (u) Providing fuel to SEA-LAND at cost or below cost.

VI

EFFECT OF VIOLATIONS

32. As a direct and proximate result of the foregoing acts, contracts, combinations and conspiracies, plaintiff has suffered substantial monetary damages to its business and property in an amount not yet ascertained. When the

amounts of said damages are ascertained, they will be inserted into this Amended Complaint.

33. As a direct and proximate result of the foregoing acts, contracts, combinations and conspiracies, competition in and for the interstate and foreign trade and commerce described herein has been substantially diminished and potential competition unlawfully reduced.

34. PFEL, beginning in August of 1974, has achieved efficiencies and management skills which gave it a better commercial position in the Far East and the Persian Gulf. It has already suffered substantial damages from the predatory actions hereinabove alleged, but nevertheless succeeded in getting an advantageous beginning position by acquiring rights to routes to the Persian Gulf before the full potential of that trade and commerce was fully recognized. Upon learning of PFEL's position in the Persian Gulf, defendants' executives formulated a plan to monopolize the trade and commerce between the Persian Gulf, the Orient and the United States and reduced that plan to writing in a secret, confidential interoffice memorandum which is attached hereto as Exhibit A and incorporated herein by this reference. Exhibit A contains an admission that the plan is a "monopolistic foreign investment." Unless this Court intervenes, the said plan will be put into full effect and will drive plaintiff out of business in the Persian Gulf. Implementation of the plan set out in Exhibit A will be carried out by various predatory acts including without limitation: commercial bribery, commercial espionage, interference with contractual relations, below-cost operations, and baseless litigation and protests in the courts and before government agencies.

WHEREFORE, plaintiff prays judgment as follows:

1. That Defendants and each of them violated Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and Section 2(c), 3 and 7 of the Clayton Act;
2. That Defendants and each of them be permanently enjoined from performing or carrying out each and every one of the unlawful acts, practices, contracts, combinations and conspiracies alleged in this complaint, including the plan to enter into a "monopolistic investment" in the Persian Gulf;
3. That INDUSTRIES be ordered to divest itself of all ownership interest in McLEAN and SEA-LAND;
4. That plaintiff recover its damages, trebled as required by Section 4 of the Clayton Act;
5. That plaintiff be awarded reasonable attorneys' fees and its costs of litigation as required by Section 4 of the Clayton Act; and
6. That plaintiff be granted such other and further relief as the Court may deem just and proper.

DATED: December 17, 1976

Law Offices of Joseph L. Alioto
 Joseph L. Alioto
 Joseph M. Alioto
 Lawrence John Appel
 By /s/ LAWRENCE JOHN APPEL
 Lawrence John Appel
 One of the Attorneys for Plaintiff

Pursuant to Rule 38(b), Fed.R.Riv.P.,
 plaintiff hereby makes demand for
 jury trial.

By /s/ LAWRENCE JOHN APPEL
 Lawrence John Appel
 One of the Attorneys for Plaintiff

Appendix F

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United States District Court
Northern District of California

No. C-76-2312-AJZ

Pacific Far East Lines, Inc.,
Plaintiff,
vs.
R. J. Reynolds Industries, Inc.,
R. J. Reynolds Tobacco Company,
R. J. Reynolds Leasing Company,
Sea-Land Service, Inc., and
McLean Industries, Inc.,
Defendants.
And Related Cross-Actions

[Filed Dec. 23, 1976]

**REPLY TO COUNTERCLAIM OF
DEFENDANT SEA-LAND SERVICE, INC. AND
COUNTERCLAIM OF
PACIFIC FAR EAST LINES, INC.
(Jury Demanded)**

Plaintiff-Counterdefendant Pacific Far East Lines, Inc. (hereinafter "PFEL") replies to the counterclaim of defendant Sea-Land Service, Inc. (hereinafter "SEA-LAND") on file herein and admits, denies and alleges as follows:

1. Denies generally and specifically each and every allegation contained at Paragraph 29 of said counterclaim and specifically denies that PFEL, acting directly or through agents and/or others, has knowingly paid, authorized or aided or abetted the payment of rebates or other payments in contravention of PFEL's applicable conference agreements and/or PFEL's applicable tariffs to shippers, consignees, forwarding agents and/or other buyers of PFEL's services and/or to persons employed by shippers, consignees, forwarding agents and/or other buyers of PFEL's services. PFEL further specifically denies that it has in any manner acted directly or through agents and/or others to engage in or to authorize or aid or abet other practices in contravention of PFEL's applicable conference agreements or tariffs or any of them. PFEL further specifically denies each and every of the allegations of Paragraph 27 of the answer of defendant SEA-LAND to the complaint on file herein to the extent that said allegations or any of them have been incorporated in or realleged at Paragraph 29 of the counterclaim herein.

2. PFEL denies generally and specifically each and every of the allegations contained at Paragraph 30 of the counterclaim herein.

3. PFEL denies the allegations contained at Paragraph 31 of the counterclaim herein and alleges specifically that

SEA-LAND has not suffered and is not continuing to suffer any injury whatsoever to its business or property.

FIRST AFFIRMATIVE DEFENSE

4. The claims asserted in the counterclaim of SEA-LAND herein are barred in whole or in part by the applicable statute of limitations, Section 4(b) of the Clayton Act 15 U.S.C. § 15(b).

SECOND AFFIRMATIVE DEFENSE

5. The claims asserted in the counterclaim of SEA-LAND herein are in whole or in part within the primary jurisdiction of the Federal Maritime Commission and are therefore not properly before this Court at this time.

THIRD AFFIRMATIVE DEFENSE

6. The counterclaim of SEA-LAND has failed to state a claim against PFEL upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

7. SEA-LAND is barred in whole or in part from receiving the relief sought in the counterclaim herein under the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

8. The claims asserted in the counterclaim of SEA-LAND herein are barred in whole or in part by the doctrine of *laches*.

SIXTH AFFIRMATIVE DEFENSE

9. SEA-LAND lacks standing to assert the claims alleged against PFEL herein.

SEVENTH AFFIRMATIVE DEFENSE

10. The counterclaim of SEA-LAND fails to comply with Rules 8(a) and 8(e) of the F.R.Civ.P.

EIGHTH AFFIRMATIVE DEFENSE

11. The claims of SEA-LAND herein fail in whole or in part to state a claim against PFEL upon which relief can be granted because of the immunity of PFEL due to Government action.

COUNTERCLAIM OF PFEL

12. PFEL realleges and incorporates herein by reference each and every allegation contained in PFEL's First Amended Complaint for damages and injunctive relief under Federal antitrust laws, filed December 17, 1976.

13. The counterclaim of SEA-LAND was filed by SEA-LAND acting as agent for the other defendants herein and was brought in bad faith in furtherance of the violations alleged by PFEL in its First Amended Complaint herein and for the purpose and with the intent of eliminating competition and restraining trade in American flag ship freight transportation, and in particular to eliminate and restrain PFEL as a viable competitor in said freight transportation, all in violation and in furtherance of defendants' violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2 and Sections 2(c), 3 and 7 of the Clayton Act 15 U.S.C. §§ 13(c), 14 and 18.

14. The unlawful acts of SEA-LAND alleged in Paragraphs 12 and 13 above injured and are continuing to injure PFEL and its business and property.

WHEREFORE, plaintiff PFEL prays judgment against defendant and counterclaimant SEA-LAND:

- (1) Dismissing the counterclaim of SEA-LAND herein;
- (2) Adjudging and declaring that defendants and each of them have violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, Sections 2(c), 3 and 7 of the Clayton Act, 15 U.S.C. §§ 13(c), 14 and 18;
- (3) That defendants and each of them be permanently enjoined from performing or carrying out each and every one of the unlawful acts, practices, contracts, combinations and conspiracies alleged in this counterclaim and PFEL's First Amended Complaint herein, including the plan to enter into a "monopolistic investment" in the Persian Gulf;
- (4) That R. J. Reynolds Industries, Inc. be ordered to divest itself of all ownership and interest in McLean Industries, Inc. and SEA-LAND;
- (5) That PFEL recover its damages trebled as required by Section 4 of the Clayton Act;
- (6) That PFEL be awarded reasonable attorneys' fees and its costs of litigation as required by Section 4 of the Clayton Act; and

(7) That PFEL be granted such other and further relief as the Court may deem just and proper.

DATED: December 22, 1976.

Law Offices of Joseph L. Alioto
 Joseph L. Alioto
 Joseph M. Alioto
 Lawrence John Appel
 Judith A. Genovese

By /s/ JUDITH A. GENOVESE
 Judith A. Genovese

Pursuant to Rule 38(b) F.R.Civ.P.
 PFEL hereby makes demand for
 jury trial on all issues raised by
 the counterclaim of SEA-LAND,
 PFEL's reply thereto and the coun-
 terclaim of PFEL.

By /s/ JUDITH A. GENOVESE
 Judith A. Genovese

One of the attorneys for PFEL

CERTIFICATE OF SERVICE BY MAIL
 JUDITH A. GENOVESE hereby certifies:

That her business address is 111 Sutter Street, San Francisco, California 94104; that she is an active member of the State Bar of California and that she is not a party to the cause.

That on the date hereof she served a copy of:

Reply to Counterclaim of Defendant Sea-Land Service, Inc. and Counterclaim of Pacific Far East Lines, Inc. (Jury Demanded)

on each of the following, by placing one copy of said document in an envelope, addressed, respectively, as follows:

Moses Lasky
 Charles B. Cohler
 Brobeck, Phleger & Harrison
 111 Sutter Street
 San Francisco, California 94104.
 Lawrence E. Walsh
 Richard E. Nolan
 Davis, Polk & Wardwell
 1 Chase Manhattan Plaza
 New York, N.Y. 10005.

That said envelope was then sealed and postage fully prepaid thereon and on said date was deposited in the United States mail at San Francisco, California.

DATED: December 23, 1976.

/s/ JUDITH A. GENOVESE
 Judith A. Genovese

Appendix G

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Attorneys for Defendants
R. J. Reynolds Tobacco Company
and Sea-Land Service, Inc.

In the United States District Court for the
Northern District of California

No. C76 2312 AJZ

Pacific Far East Line, Inc.,

Plaintiff,

vs.

R. J. Reynolds Industries, Inc.,
R. J. Reynolds Tobacco Company,
R. J. Reynolds Leasing Company,
Sea-Land Services Inc., and
McLean Industries, Inc.,

Defendants.

**ANSWER TO AMENDED COMPLAINT AND
COUNTERCLAIM OF DEFENDANT
SEA-LAND SERVICE, INC.**

Defendant Sea-Land Service, Inc. ("Sea-Land"), for its answer to the Amended Complaint herein, admits, denies and alleges as follows:

1. Denies each and every allegation contained in paragraph 1, except admits and alleges that plaintiff purports to bring this action pursuant to sections 4, 12 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26.
2. Denies each and every allegation contained in paragraph 2, except admits and alleges that Sea-Land and R. J. Reynolds Tobacco Company ("Reynolds Tobacco") are qualified to do business in the State of California and are found within the Northern District of California.
3. Denies each and every allegation contained in paragraph 3, except admits that R. J. Reynolds Industries, Inc. ("Industries") owns one hundred percent of the stock of Reynolds Tobacco, McLean Industries, Inc. ("McLean"), Reynolds Leasing Corporation and RJR Foods, Inc. and that through subsidiaries it owns Sea-Land, American Independent Oil Company, R. J. Reynolds Tobacco International, S. A., Macdonald Tobacco Company, and R. J. Reynolds Tabacos do Brasil Ltda.
4. Denies each and every allegation contained in paragraph 4.
5. Denies each and every allegation contained in paragraph 5, except admits that defendant Industries is the sole stockholder of Sea-Land and that Sea-Land has compensated Industries for certain staff services performed by Industries in Winston-Salem, North Carolina.

6. Denies each and every allegation contained in paragraph 6, except admits that Sea-Land has, since 1970, reported to the Board of Directors of Industries as to overall financial and senior management matters involving Sea-Land's activities on a monthly, quarterly and year-end basis and that on occasion reports have been made on various subjects on a more frequent basis.
7. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 7.
8. Denies each and every allegation contained in paragraph 8, except admits that Industries annually prepares on the basis, in part, of information submitted to it by Sea-Land, a consolidated budget which includes the required or anticipated business expenditures in summary form submitted by all of its subsidiary companies, including Sea-Land, and which in small part necessarily includes business expenditures required or anticipated by Sea-Land for the conduct of its business in the Northern District of California.
9. Denies each and every allegation contained in paragraph 9.
10. Denies each and every allegation contained in paragraph 10.
11. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 11.

12. Denies each and every allegation contained in paragraph 12, except admits that Industries has a financial interest as sole shareholder of the parent corporation of Sea-Land and of Reynolds Leasing Corporation in Sea-Land property, some of which may from time to time be located in or occasionally call at ports in the Northern District of California.

13. Denies each and every allegation contained in paragraph 13, except admits that Industries has from time to time since 1970 participated in the financing of the purchase of ships and other property of Sea-Land which from time to time may be located or occasionally call at ports in the Northern District of California.

14. Denies each and every allegation contained in paragraph 14, except admits that the business of Industries is to provide coordinated and centralized financial administrative, personnel, public relations and other services, and as sole shareholder it has the ultimate management responsibility, for its subsidiaries, including Sea-Land.

15. Denies each and every allegation contained in paragraph 15, except admits that since 1972, Industries has carried out the functions described above at paragraph 14 of this answer and that this work has involved occasional visits by officers and employees of Industries in the Northern District of California.

16. Denies each and every allegation contained in paragraph 16, except admits that Industries characterized its business operations in its 100th Anniversary Report to Shareholders in 1975 as set forth in the quoted material contained in paragraph 16 of the amended complaint.

17. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 17, except admits and alleges upon information and belief that Plaintiff Pacific Far East Line, Inc. ("PFEL") is a Delaware corporation with its principal place of business in San Francisco, California and is engaged in the operation of freight transportation by American flag vessels to the Far East and the Persian Gulf.

18. Denies each and every allegation contained in paragraph 18, except repeats and realleges paragraphs 3 through 16 of this answer.

19. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 19, except admits and alleges that defendant Reynolds Tobacco is a New Jersey corporation with its principal place of business in Winston-Salem, North Carolina.

20. Admits paragraph 20.

21. Denies each and every allegation contained in paragraph 21, except (a) admits and alleges that Sea-Land is a corporation organized under the laws of the State of Delaware and is a wholly-owned subsidiary of McLean, (b) is without knowledge or information sufficient to form a belief as to the truth of the allegation that Sea-Land operates the largest containerized freight transportation system in the world utilizing containers, containerships, chassis and related terminal equipment, (c) admits and alleges that Sea-Land operates in the domestic trade of

the United States and in foreign commerce, and (d) admits and alleges that in 1964 Sea-Land's revenues from its containership operation were \$83,905,646 and that in 1975 Sea-Land's revenues from its containership operation were \$759,423,098.

21(a). Admits the allegations of paragraph 21(a), except alleges that the correct name of said defendant is Reynolds Leasing Corporation.

22. Denies each and every allegation contained in paragraph 22.

23. Denies each and every allegation contained in paragraph 23, except (a) admits and alleges upon information and belief that PFEL engages in foreign commerce, and (b) admits and alleges that Sea-Land engages in interstate and foreign commerce.

24. Denies each and every allegation contained in paragraph 24, except admits that since 1965 Sea-Land has directly competed against PFEL on various routes.

25. Denies each and every allegation contained in paragraph 25.

26. Denies each and every allegation contained in paragraph 26.

27. Denies each and every allegation contained in paragraph 27.

28. Denies each and every allegation contained in paragraph 28, except admits and alleges that since 1966 there have been changes in world trade, the nature of port operations and the composition of the world's fleet of cargo ships.

29. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 29, except admits and alleges that American companies have been active in the movement toward containerized, LASH and Ro-Ro transportation systems.

30. Denies each and every allegation contained in paragraph 30.

31. Denies each and every allegation contained in paragraph 31, except admits and alleges that R. J. Reynolds Industries, Inc. has concluded, based on an investigation by its attorneys, that more than \$19 million in possibly illegal rebates has been paid by Sea-Land to shippers, consignees and forwarding agents during the period 1971 through 1975, and with respect to the allegations of paragraphs 31(f) and (t); respectfully refers to court papers previously filed by defendants in this action.

32. Denies each and every allegation contained in paragraph 32.

33. Denies each and every allegation contained in paragraph 33.

34. Denies each and every allegation contained in paragraph 34.

FIRST AFFIRMATIVE DEFENSE

35. Plaintiff is barred from receiving relief from this Court by the doctrine of unclean hands.

SECOND AFFIRMATIVE DEFENSE

36. The claims asserted in the Complaint herein are barred in whole or in part by the applicable statute of

limitations, Section 4(b) of the Clayton Act, 15 U.S.C. § 15b.

THIRD AFFIRMATIVE DEFENSE

37. The claims asserted in the complaint herein are in whole or in part within the primary jurisdiction of the Federal Maritime Commission and are therefore not properly before this Court at this time.

FOURTH AFFIRMATIVE DEFENSE

38. Upon information and belief, PFEL, acting directly or through agents and others, has knowingly paid, authorized and aided and abetted the payment of rebates and other payments in contravention of PFEL's applicable conference agreements and PFEL's applicable tariffs to shippers, consignees, forwarding agents and other buyers of PFEL's services and to persons employed by shippers, consignees, forwarding agents and other buyers of PFEL's services. Upon information and belief, PFEL, acting directly or through agents or others, has also engaged in, authorized and aided and abetted other practices in contravention of PFEL's applicable conference agreements and tariffs. Upon information and belief, such payments and practices began before 1968 and are still continuing. Upon information and belief, such payments and practices have been made for the purpose and with the effect of disadvantaging competitors of PFEL, including Sea-Land. Upon information and belief, PFEL has knowingly failed to disclose, or has issued false denials of, the existence of such payments and practices to the Maritime Administration of the United States Department of Commerce in connection with PFEL's application for and receipt of

operating differential subsidy ("ODS") payments from the United States Government, as well as to the Federal Maritime Commission, the Securities and Exchange Commission, other agencies of the United States Government and the general public. Upon information and belief, such failure to disclose and such denials were done for the purpose and with the effect of receiving ODS payments and of disadvantaging competitors of PFEL, including Sea-Land.

39. In view of the facts alleged in paragraph 38, any acts of Sea-Land complained of herein were performed in self-defense against illegal and fraudulent acts of PFEL and others and were performed without any purpose or effect of restraining competition. Such acts of Sea-Land did not violate any of the United States antitrust laws.

COUNTERCLAIM

40. Sea-Land realleges each and every allegation contained in paragraph 38.

41. The acts of PFEL in failing to disclose, or in issuing false denials of, the existence of rebates and other payments and other practices alleged in paragraphs 38 and 40 above constitute violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, as well as of other Federal statutes. The acts of PFEL alleged in paragraphs 38 and 40 above also constitute unlawful fraud and intentional infliction of business injury upon Sea-Land.

42. The unlawful acts of PFEL alleged in paragraphs 38 and 40 above injured and are continuing to injure Sea-Land in its business and property.

WHEREFORE, defendant Sea-Land Service, Inc. prays judgment against plaintiff Pacific Far East Line, Inc.:

1. Dismissing the amended complaint;
2. Adjudging and declaring that the acts of PFEL alleged in paragraphs 38 and 40 above constitute violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and enjoining and restraining PFEL and all persons acting in concert and participation with PFEL from engaging in any such acts;
3. Awarding Sea-Land treble the amount of its damages sustained by reason of the acts alleged in paragraphs 38 and 40 above, as required by Section 4 of the Clayton Act, 15 U.S.C. § 15;
4. Awarding Sea-Land its cost of litigation and reasonable attorneys' fees, as required by Section 4 of the Clayton Act, 15 U.S.C. § 15; and
5. Granting Sea-Land such other and further relief as may be just and proper.

Dated: January 7, 1977

Moses Lasky
 Charles B. Cohler
 Brobeck, Phleger & Harrison

 Lawrence E. Walsh
 Richard E. Nolan
 Davis Polk & Wardwell

By RICHARD E. NOLAN
Attorneys for Defendant
Sea-Land Service, Inc.

Appendix H

Lawrence John Appel, A Member of
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 Telephone: (415) 434-2100
 Attorneys for Plaintiff

United States District Court
 Northern District of California

No. C-76-2312-AJZ

Pacific Far East Lines, Inc.,
 Plaintiff,
 vs.
 R. J. Reynolds Industries, Inc.,
 R. J. Reynolds Tobacco Company,
 R. J. Reynolds Leasing Company,
 Sea-Land Service Inc., and
 McLean Industries, Inc.,
 Defendants.
 And Related Cross-Actions

[Filed Feb. 3, 1977]

REPLY TO COUNTERCLAIM OF
 DEFENDANT SEA-LAND SERVICE, INC., AND
 COUNTERCLAIM OF
 PACIFIC FAR EAST LINES, INC.

(Jury Demanded)

Pacific Far East Lines, Inc. (hereinafter "PFEL") replies to the counterclaim of defendant Sea-Land Service, Inc. (hereinafter "SEA-LAND") dated January 7, 1977 admits, denies and alleges as follows:

1. Denies generally and specifically each and every allegation contained at Paragraph 40 of said counterclaim. PFEL further generally and specifically denies each and every of the allegations of Paragraph 38 of the answer of defendant SEA-LAND to the Amended Complaint on file herein to the extent that said allegations or any of them have been incorporated in or realleged at Paragraph 40 of the counterclaim herein.
2. PFEL denies generally and specifically each and every of the allegations contained at Paragraph 41 of the counterclaim herein.
3. PFEL denies the allegations contained at Paragraph 42 of the counterclaim herein and alleges specifically that SEA-LAND has not suffered and is not continuing to suffer any injury whatsoever to its business or property.

FIRST AFFIRMATIVE DEFENSE

4. The claims asserted in the counterclaim of SEA-LAND herein are barred in whole or in part by the applicable statute of limitations, Section 4(b) of the Clayton Act 15 U.S.C., Section 15(b).

SECOND AFFIRMATIVE DEFENSE

5. The claims asserted in the counterclaim of SEA-LAND herein are in whole or in part within the primary jurisdiction of the Federal Maritime Commission and are therefore not properly before this Court at this time.

THIRD AFFIRMATIVE DEFENSE

6. The counterclaim of SEA-LAND has failed to state a claim against PFEL upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

7. SEA-LAND is barred in whole or in part from receiving the relief sought in the counterclaim herein under the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

8. The claims asserted in the counterclaim of SEA-LAND herein are barred in whole or in part by the doctrine of *laches*.

SIXTH AFFIRMATIVE DEFENSE

9. SEA-LAND lacks standing to assert the claims alleged against PFEL herein.

SEVENTH AFFIRMATIVE DEFENSE

10. The counterclaim of SEA-LAND fails to comply with Rules 8(a) and 8(e) of the Federal Rules of Civil Procedure.

EIGHTH AFFIRMATIVE DEFENSE

11. The claims of SEA-LAND herein fail in whole or in part to state a claim against PFEL upon which relief can be granted because of the immunity of PFEL due to Government action.

COUNTERCLAIM OF PFEL

12. PFEL realleges and incorporates herein by reference each and every allegation contained in PFEL's First Amended Complaint for damages and injunctive relief under Federal antitrust laws, filed December 17, 1976.

13. The counterclaim of SEA-LAND was filed by SEA-LAND acting as agent for the other defendants herein and was brought in bad faith in furtherance of the violations alleged by PFEL in its First Amended Complaint herein and for the purpose and with the intent of eliminating competition and restraining trade in American flag ship freight transportation, and in particular to eliminate and restrain PFEL as a viable competitor in said freight transportation, all in violation and in furtherance of defendants' violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2 and Sections 2(c), 3 and 7 of the Clayton Act 15 U.S.C. Sections 13(c), 14 and 18.

14. The unlawful acts of SEA-LAND alleged in paragraphs 12 and 13 above injured and are continuing to injure PFEL and its business and property.

WHEREFORE, plaintiff PFEL prays judgment against defendant and counterclaimant SEA-LAND:

- (1) Dismissing the counterclaim of SEA-LAND herein;
- (2) Adjudging and declaring that defendants and each of them have violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2, Sections 2(c), 3 and 7 of the Clayton Act, 15 U.S.C. Sections 13(c), 14 and 18;

- (3) That defendants and each of them be permanently enjoined from performing or carrying out each and every one of the unlawful acts, practices, contracts, combinations and conspiracies alleged in this counterclaim and PFEL's First Amended Complaint herein, including the plan to enter into a "monopolistic investment" in the Persian Gulf;
- (4) That R. J. Reynolds Industries, Inc. be ordered to divest itself of all ownership and interest in McLean Industries, Inc. and SEA-LAND;
- (5) That PFEL recover its damages trebled as required by Section 4 of the Clayton Act;
- (6) That PFEL be awarded reasonable attorneys' fees and its costs of litigation and required by Section 4 of the Clayton Act; and
- (7) That PFEL be granted such other and further relief as the Court may deem just and proper.

Dated: February 3, 1977.

Lawrence John Appel, a Member of
Law Offices of Joseph L. Alioto
Joseph M. Alioto
111 Sutter Street, Suite 2100
San Francisco, California 94104

By /s/ LAWRENCE JOHN APPEL
Lawrence John Appel

Pursuant to Rule 38(b) Federal Rules
of Civil Procedure, PFEL hereby
makes demand for jury trial on all
issues raised by the counterclaim of
SEA-LAND, PFEL'S reply thereto
and the counterclaim of PFEL.

By /s/ LAWRENCE JOHN APPEL
Lawrence John Appel
One of the Attorneys for PFEL

CERTIFICATE OF SERVICE BY MAIL

Geraldine S. Beck certifies that her business address is
111 Sutter Street, San Francisco, California 94104; and
that she is a resident of the State of California.

That on the date hereof she served a copy of:

Reply to Counterclaim of Defendant SEA-LAND
SERVICE, INC. and Counterclaim of PACIFIC FAR
EAST LINES, INC.

on each of the following, by placing one copy of each of
said documents in an envelope addressed, respectively as
follows:

Moses Lasky
Charles B. Cohler
Brobeck, Phleger & Harrison
111 Sutter Street
San Francisco, California 94104

Lawrence E. Walsh
Richard E. Nolan
Davis Polk & Wardwell
One Chase Manhattan Plaza

That said envelope was then sealed and postage fully
prepaid thereon and on said date was deposited in the
United States mail at San Francisco, California.

Dated: February 3, 1977

/s/ GERALDINE S. BECK
Geraldine S. Beck

Appendix I

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Joseph M. Alioto
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111 Sutter Street, Suite 2100
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Telephone: (415) 434-2100
Attorneys for Plaintiff

United States District Court
Northern District of California
No. C-77-0582-CBR

States Steamship Company,
Plaintiff,
vs.
Sea-Land Service, Inc. and
R. J. Reynolds Tobacco Company,
Defendants.

[Filed Mar. 21, 1977]

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF UNDER
FEDERAL ANTITRUST LAWS**

(Jury Demanded)

Plaintiff States Steamship Company (hereinafter "States"), demanding trial by jury, complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted against the named defendants under Sections

4, 12 and 16 of the Clayton Act (15 U.S.C. §§ 15, 22 and 26) to secure damages for and injunctive relief against the violations by the named defendants of Section 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) and Sections 2(c), 3 and 7 of the Clayton Act (15 U.S.C. §§ 13(c), 14 and 18).

2. Defendants, and each of them, transact business, maintain an office, have agents and employees, and are found within the Northern District of California. Defendants, and each of them, are within the jurisdiction of this Court for the purpose of service of process. The interstate trade and commerce hereinafter described is in part carried on, and the acts done in violation of the antitrust laws hereinafter alleged, were performed, in part, within the Northern District of California.

II

THE PARTIES

3. States Steamship Company is a Nevada corporation with its principal place of business in San Francisco, California. States is an ocean freight carrier and is engaged in the business of transporting freight by American Flag Vessel in the United States and foreign commerce.

4. Sea-Land Service, Inc. ("Sea-Land") is a Delaware corporation and maintains a major business office in Oakland, California. Sea-Land is an ocean freight carrier and is engaged in the business of transporting freight by American Flag Vessels in the United States and foreign commerce.

5. Sea-Land operates the largest containerized freight transportation system in the world utilizing containers, container ships, chassis, and related terminal equipment. Sea-Land operates 31.6% of all container ships in foreign commerce and 55% of all container ships operating in foreign commerce under the flag of the United States.

6. R. J. Reynolds Tobacco Company ("Tobacco") is a New Jersey corporation with its principal place of business in Winston-Salem, North Carolina and is the largest manufacturer of tobacco products in the United States. Through a series of acquisitions and mergers beginning about 1963, Tobacco has expanded its activities into areas other than tobacco. At least one of these acquisitions was the subject of an action brought by the United States under Section 7 of the Clayton Act as a result of which, on or about September, 1969, Tobacco was ordered to divest. In one of its largest acquisitions, Tobacco, in May, 1969, acquired the business and assets of the predecessor of McLean Industries, Inc.

III

CO-CONSPIRATORS

7. Certain corporations, persons or entities participated in and made statements and performed acts in furtherance of the violations of the antitrust laws alleged in this Complaint, including without limitation, R. J. Reynolds Industries, Inc., Reynolds Leasing Corporation, Aminoil International, Inc., American Independent Oil Company, Aminoil U.S.A., Inc. and McLean Industries, Inc.

8. R. J. Reynolds Industries, Inc. ("Industries") owns and controls one hundred percent (100%) of the stock of Tobacco, Sea-Land, McLean Industries, Inc., Reynolds Leasing Corporation, American Independent Oil Company, Aminoil International, Inc. and Aminoil U.S.A., Inc.

9. McLean Industries, Inc. is a Delaware corporation and a wholly-owned subsidiary of Industries and is the successor to the assets and the business of a corporation of the same name that was acquired by Tobacco in May, 1969. McLean Industries, Inc. is and was a holding company operating through a number of wholly-owned subsidiaries, the principal one of which, Sea-Land, accounted for most of the revenues of McLean's predecessor.

10. Reynolds Leasing Corporation is a wholly-owned subsidiary corporation of Industries and leases ships and containers to Sea-Land.

IV

TRADE AND COMMERCE

11. The trade and commerce involved herein are the transportation of freight by common carriers by water in United States and foreign commerce.

12. A common carrier by water engages in water-borne transportation of passengers or property, and makes its services available to the general public at published tariffs on a first-come, first-served basis, operating regularly scheduled sailings on designated trade routes. A common carrier by water is to be distinguished from what is com-

monly called an ocean tramp, which engages in contracted water-borne transportation services for specific customers at negotiated rates. A common carrier by water in foreign commerce makes its regularly scheduled sailings on designated trade routes between United States ports and ports in foreign countries or in territories or possessions of the United States.

13. All military cargoes shipped by the Department of Defense or related agencies to foreign countries must be carried in vessels operating under the United States flag.

14. States and Sea-Land are and at all times relevant herein were, engaged in interstate and foreign commerce in the operation of their freight vessels throughout the world. Sea-Land and States have been in direct competition with each other on various routes since 1968 in the above-described trade and commerce.

V

OFFENSES CHARGED

15. Defendants and each of them have, since 1964 and continuing to the date of this Complaint, performed acts and contracted, combined and conspired between and among themselves and with others to unreasonably restrain the trade and commerce hereinabove described and have contracted, combined and conspired between and among themselves and with others to monopolize and have attempted to monopolize and monopolized the trade and commerce hereinabove described, all in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and

Sections 2(c), 3 and 7 of the Clayton Act (15 U.S.C. §§ 13(c), 14 and 18).

16. The acts, contracts, combinations, conspiracies and violations alleged at Paragraph 15 above have consisted, in part, of the following acts, practices and courses of conduct, all performed and undertaken by defendants, and each of them, with the express and predatory purpose and intent of eliminating the actual and potential competition of plaintiff and injuring plaintiff in its business and property:

(a) During a period beginning August 30, 1972, and continuing through April 1, 1976, Sea-Land, either alone or in conjunction with other persons, directly or indirectly, allowed shippers and consignees or their agents in the United States trades with Europe, the Mediterranean, the Caribbean, and the Far East, to obtain transportation for property at less than the regular rates or charges then established and enforced by Sea-Land, by the use of unjust or unfair devices or means, resulting in 540 or more violations of Section 16, Secon, of the Act (46 U.S.C. Section 815);

(b) On a continuing daily basis throughout the period from August 30, 1972, until April 1, 1976, Sea-Land engaged in rebating, refunding or remitting portions of the rates and charges in effect and specified in its tariffs on file with the Federal Maritime Commission, to shippers and consignees, or their agents, which resulted in 1,300 or more violations of Section 18(b)(3) of the Act (46 U.S.C. Section 817);

(c) Unlawfully paying nineteen million dollars (\$19,000,000.00) in rebates to shippers, consignees and forwarding agents during the period 1971 through 1975;

(d) Unlawfully paying more than twenty million dollars (\$20,000,000.00) in excess commissions to shipping agents, buyers, and agents of buyers during the period 1971 through 1975 and failing to disclose the fact of said payments;

(e) Leasing and selling goods, equipment, supplies and other commodities, including shipping containers, and fixing the price charged therefor on the condition that the lessees and purchasers of said goods, supplies and other commodities not use or deal in the goods, equipment, supplies and commodities of competitors of defendants, including plaintiff and on the further condition that said goods, supplies and other commodities not be sold to or used by competitors of defendants, including plaintiff;

(f) Agreeing to operate and operating Reynolds Leasing Corporation, Sea-Land and other subsidiaries of Industries below cost;

(g) Arranging and following intercompany accounting procedures for the purpose or concealing the fact of below-cost operation by Sea-Land and other subsidiaries of Industries;

(h) Subsidizing Sea-Land's below-cost predatory tactics from the huge interstate and foreign treasuries of Industries supplemented in turn by United States Government subsidies, direct and indirect, to Industries;

(i) Threatening to engage and actually engaging in litigations, interferences and protests in courts and before government bureaus and agencies against American-flag operators for anti-competitive purposes and for the intended purpose of causing unnecessary litigation expenses and delays in the granting of governmental rights and licenses to American-flag competitors;

(j) Paying unlawful bribes and political contributions in the United States and elsewhere in an effort to increase monies and profits available to defendants for purposes of competing against plaintiff and to unlawfully affect shipping regulations, tariffs and laws and to secure preferential berthing rights;

(k) Agreed to deal reciprocally between and among themselves to the intended detriment of plaintiff;

(l) Threatening to adopt and adopting rebate policies to lower the revenues of American-flag competitors;

(m) Attempting to acquire competitive ocean freight carriers for the purpose of restraining and monopolizing trade;

(n) Over-tonnage trade for the purpose of driving American-flag competitors to bankruptcy;

(o) Utilizing steamship conferences for the purpose of acting in concert against competitors, including plaintiff;

(p) Engaging in predatory acts of commercial espionage, interference and pricing against American-flag competitors;

(q) Acquiring substantial interests in the oil industry for the purpose of gaining competitive leverage over American-flag competitors;

(r) Attempting to defeat and forestall plaintiff's efforts to introduce RO-RO as a competitive shipping service and opposing all attempts to make RO-RO competitive with containerized shipping services;

(s) Maintaining off-book slush funds of cash from which they intended to pay and did pay commercial bribes and other illegal rebates;

(t) Providing fuel to Sea-Land at cost or below cost.

17. Plaintiff had no knowledge of the unlawfulness of the acts hereinabove alleged, or of any facts which might reasonably have led to the discovery thereof until September, 1976. Plaintiff could not have discovered the unlawful acts at an earlier date by the exercise of due diligence because of the secretive and deceptive techniques employed by defendants to avoid detection.

VI

EFFECT OF VIOLATIONS

18. As a direct and proximate result of the foregoing acts, contracts, combinations and conspiracies, plaintiff has

suffered substantial monetary damage to its business and property in an amount not as yet ascertained. When the amounts of said damages are ascertained, they will be inserted into this Complaint.

19. As a direct and proximate result of the foregoing acts, contracts, combinations and conspiracies, competition in and for the interstate and foreign trade and commerce described herein has been substantially diminished and potential competition unlawfully reduced.

WHEREFORE, plaintiff prays judgment as follows:

1. That defendants and each of them violated Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and Sections 2(c), 3 and 7 of the Clayton Act;
2. That defendants and each of them be permanently enjoined from performing or carrying out each and every one of the unlawful acts, practices, contracts, combinations and conspiracies alleged in this Complaint;
3. That Industries be ordered to divest itself of all ownership interest in McLean and Sea-Land;
4. That plaintiff recover its damages, trebled as required by Section 4 of the Clayton Act;
5. That plaintiff be awarded reasonable attorneys' fees and its costs of litigation as required by Section 4 of the Clayton Act; and

6. That plaintiff be granted such other and further relief as the Court may deem just and proper.

Dated: March 21, 1977.

Alioto & Alioto
Joseph M. Alioto
Lawrence John Appel

By LAWRENCE JOHN APPEL

Lawrence John Appel
One of the Attorneys for Plaintiff

Pursuant to Rule 38(b), Fed.R.Civ.P.,
plaintiff hereby makes demand for
jury trial.

By LAWRENCE JOHN APPEL

Lawrence John Appel
One of the Attorneys for Plaintiff

Appendix J

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Attorneys for Defendant
Sea-Land Service, Inc.

In the United States District Court
For the Northern District of California

No. C 77 0582 CBR

States Steamship Company,
Plaintiff,
vs.
Sea-Land Service, Inc. and
R. J. Reynolds Tobacco Company,
Defendants.

**ANSWER TO COMPLAINT AND COUNTERCLAIM
OF DEFENDANT SEA-LAND SERVICE, INC.**

Defendant Sea-Land Service, Inc. ("Sea-Land"), for its answer to the Complaint herein, admits, denies and alleges as follows:

1. Denies each and every allegation contained in paragraph 1, except admits and alleges that plaintiff purports to bring this action pursuant to sections 4, 12 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26.

2. Denies each and every allegation contained in paragraph 2, except admits and alleges that Sea-Land and R. J. Reynolds Tobacco Company ("Reynolds Tobacco") are qualified to do business in the State of California and are found within the Northern District of California.

3. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 3, except admits and alleges upon information and belief that plaintiff States Steamship Company ("States") is a Nevada corporation with its principal place of business in San Francisco, California and is engaged in the operation of freight transportation by American flag vessels in the United States and foreign commerce.

4. Denies each and every allegation contained in paragraph 4, except (a) admits and alleges that Sea-Land is a corporation organized under the laws of the State of Delaware, (b) admits and alleges that Sea-Land maintains a business office in Oakland, California, and (c) admits and alleges that Sea-Land operates in the domestic trade of the United States and in foreign commerce.

5. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 5.

6. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 6, except admits and alleges that defendant Reynolds Tobacco is a New Jersey corporation with its principal place of business in Winston-Salem, North Carolina.

7. Denies each and every allegation contained in paragraph 7.

8. Denies each and every allegation contained in paragraph 8, except admits that R. J. Reynolds Industries, Inc. owns one hundred percent of the stock of Reynolds Tobacco, McLean Industries, Inc., Aminoil International, Inc., and Reynolds Leasing Corporation and that through subsidiaries it owns Sea-Land, American Independent Oil Company and Aminoil U.S.A. Inc.

9. Admits the allegations of paragraph 9.

10. Admits the allegations of paragraph 10.

11. Is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 11.

12. Denies each and every allegation contained in paragraph 12.

13. Denies each and every allegation contained in paragraph 13.

14. Denies each and every allegation contained in paragraph 14, except (a) admits and alleges upon information and belief that States engages in foreign commerce and

(b) admits and alleges that Sea-Land engages in interstate and foreign commerce.

15. Denies each and every allegation contained in paragraph 15.

16. Denies each and every allegation contained in paragraph 16, except admits and alleges that R. J. Reynolds Industries, Inc. has concluded, based on an investigation by its attorneys, that more than \$19 million in possibly illegal rebates has been paid by Sea-Land to shippers, consignees and forwarding agents during the period 1971 through 1975.

17. Denies each and every allegation contained in paragraph 17.

18. Denies each and every allegation contained in paragraph 18.

19. Denies each and every allegation contained in paragraph 19.

FIRST AFFIRMATIVE DEFENSE

20. Plaintiff is barred from receiving relief from this Court by the doctrine of unclean hands.

SECOND AFFIRMATIVE DEFENSE

21. The claims asserted in the Complaint herein are barred in whole or in part by the applicable statute of limitations, Section 4B of the Clayton Act, 15 U.S.C. § 15b.

THIRD AFFIRMATIVE DEFENSE

22. The claims asserted in the Complaint herein are in whole or in part within the primary jurisdiction of the

Federal Maritime Commission and are therefore not properly before this Court at this time.

FOURTH AFFIRMATIVE DEFENSE

23. Upon information and belief, States, acting directly or through agents and others, has knowingly paid, authorized and aided and abetted the payment of rebates and other payments in contravention of States' applicable conference agreements and States' applicable tariffs to shippers, consignees, forwarding agents and other buyers of States' services and to persons employed by shippers, consignees, forwarding agents and other buyers of States' services. Upon information and belief, States, acting directly or through agents or others, has also engaged in, authorized and aided and abetted other practices in contravention of States' applicable conference agreements and tariffs. Upon information and belief, such payments and practices began before 1971 and are still continuing. Upon information and belief, such payments and practices have been made for the purpose and with the effect of disadvantaging competitors of States, including Sea-Land. Upon information and belief, States has knowingly failed to disclose the existence of such payments and practices to the Maritime Administration of the United States Department of Commerce in connection with States' application for and receipt of operating differential subsidy ("ODS") payments from the United States Government, as well as to the Federal Maritime Commission and other agencies of the United States Government and the general public. Upon information and belief, such failure to disclose and such denials were done for the purpose and with

the effect of receiving ODS payments and of disadvantaging competitors of States, including Sea-Land.

24. In view of the facts alleged in paragraph 23, any acts of Sea-Land complained of herein were performed in self-defense against illegal and fraudulent acts of States and other and were performed without any purpose or effect of restraining competition. Such acts of Sea-Land did not violate any of the United States antitrust laws.

COUNTERCLAIM

25. Sea-Land realleges each and every allegation contained in paragraph 23.

26. The acts of States in failing to disclose, or in issuing false denials of, the existence of rebates and other payments and other practices alleged in paragraphs 23 and 25 above constitute violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, as well as of other Federal statutes. The acts of States alleged in paragraphs 23 and 25 above also constitute unlawful fraud and intentional infliction of business injury upon Sea-Land.

27. The unlawful acts of States alleged in paragraphs 23 and 25 above injured and are continuing to injure Sea-Land in its business and property.

WHEREFORE, defendant Sea-Land Service, Inc. prays judgment against plaintiff States Steamship Company:

1. Dismissing the complaint;
2. Adjudging and declaring that the acts of States alleged in paragraphs 23 and 25 above constitute violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C.

§§ 1 and 2, and enjoining and restraining States and all persons acting in concert and participation with States from engaging in any such acts;

3. Awarding Sea-Land treble the amount of its damages sustained by reason of the acts alleged in paragraphs 23 and 25 above, as required by Section 4 of the Clayton Act, 15 U.S.C. § 15;

4. Awarding Sea-Land its cost of litigation and reasonable attorneys' fees, as required by Section 4 of the Clayton Act, 15 U.S.C. § 15; and

5. Granting Sea-Land such other and further relief as may be just and proper.

Dated: June 22, 1977

Moses Lasky

Charles B. Cohler

Brobeck, Phleger & Harrison

Lawrence E. Walsh

Richard E. Nolan

Davis Polk & Wardwell

By /s/ LAWRENCE E. WALSH

Attorneys for Defendant
Sea-Land Service, Inc.

Appendix K

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Telephone: (415) 434-2100
Attorneys for Plaintiff

United States District Court
Northern District of California

No. C-77-0582-AJZ

States Steamship Company,
Plaintiff,
vs.
Sea-Land Service, Inc. and
R. J. Reynolds Tobacco Company,
Defendants.
And Related Cross-Actions

[Filed July 12, 1977]

**REPLY TO COUNTERCLAIM OF DEFENDANT
SEA-LAND SERVICE, INC. AND COUNTERCLAIM
OF STATES STEAMSHIP COMPANY
(Jury Demanded)**

States Steamship Company replies to the counterclaim of defendant Sea-Land Service, Inc. dated June 22, 1977 and admits, denies and alleges as follows:

1. Denies generally and specifically each and every allegation contained at Paragraph 25 of said counterclaim.

States further generally and specifically denies each and every of the allegations of Paragraph 23 of the answer of defendant Sea-Land to the Complaint on file herein to the extent that said allegations or any of them have been incorporated in or realleged at Paragraph 25 of the counterclaim herein.

2. States denies generally and specifically each and every of the allegations contained at Paragraph 26 of the counterclaim herein.

3. States denies the allegations contained in Paragraph 27 of the counterclaim herein and alleges specifically that Sea-Land has not suffered and is not continuing to suffer any injury whatsoever to its business or property.

FIRST AFFIRMATIVE DEFENSE

4. The claims asserted in the counterclaim of Sea-Land herein are barred in whole or in part by the applicable statute of limitations, Section 4(b) of the Clayton Act 15 U.S.C., Section 15(b).

SECOND AFFIRMATIVE DEFENSE

5. The claims asserted in the counterclaim of Sea-Land herein are in whole or in part within the primary jurisdiction of the Federal Maritime Commission and are therefore not properly before this Court at this time.

THIRD AFFIRMATIVE DEFENSE

6. The counterclaim of Sea-Land has failed to state a claim against States upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

7. Sea-Land is barred in whole or in part from receiving the relief sought in the counterclaim herein under the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

8. The claims asserted in the counterclaim of Sea-Land herein are barred in whole or in part by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

9. Sea-Land lacks standing to assert the claims alleged against States herein.

SEVENTH AFFIRMATIVE DEFENSE

10. The counterclaim of Sea-Land fails to comply with Rules 8(a) and 8(e) of the Federal Rules of Civil Procedure.

EIGHTH AFFIRMATIVE DEFENSE

11. The claims of Sea-Land herein fail in whole or in part to state a claim against States upon which relief can be granted because of the immunity of States due to Government action.

COUNTERCLAIM OF STATES STEAMSHIP COMPANY

12. States realleges and incorporates herein by reference each and every allegation contained in States' Complaint for damages and injunctive relief under the Federal antitrust laws, filed March 21, 1977.

13. The counterclaim of Sea-Land was filed by Sea-Land acting as agent for the other defendant herein and was brought in bad faith in furtherance of the violations alleged by States' Complaint herein and for the purpose and with the intent of eliminating competition and restraining trade in American flag ship freight transportation, and in particular to eliminate and restrain States as a viable competitor in said freight transportation, all in violation and in furtherance of defendants' violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2 and Sections 2(c), 3 and 7 of the Clayton Act 15 U.S.C. Sections 13(c), 14 and 18.

14. The unlawful acts of Sea-Land alleged in Paragraphs 12 and 13 above injured and are continuing to injure States in its business and property.

WHEREFORE, plaintiff States prays judgment against defendant and counterclaimant Sea-Land:

- (1) Dismissing the counterclaim of Sea-Land herein;
- (2) Adjudging and declaring that defendants and each of them have violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2, Sections 2(c), 3 and 7 of the Clayton Act, 15 U.S.C. Sections 13(c), 14 and 18;
- (3) That defendants and each of them be permanently enjoined from performing or carrying out each and every one of the unlawful acts, practices, contracts, combinations and conspiracies alleged in this counterclaim and States' Complaint herein;

- (4) That States recover its damages trebled as required by Section 4 of the Clayton Act;
- (5) That States be awarded reasonable attorneys' fees and its costs of litigation as required by Section 4 of the Clayton Act; and
- (6) That States be granted such other and further relief as the Court may deem just and proper.

Dated: June 12, 1977.

Alioto and Alioto
Joseph M. Alioto
Lawrence John Alioto
111 Sutter Street, Suite 2100
San Francisco, CA 94104

By /s/ LAWRENCE JOHN APPEL
Lawrence John Appel

Pursuant to Rule 38(b) Federal Rules of Civil Procedure, States hereby makes demand for jury trial on all issues raised by the counterclaim of Sea-Land, States' reply thereto and the counterclaim of States.

By /s/ LAWRENCE JOHN APPEL
Lawrence John Appel
One of the attorneys for Plaintiff

CERTIFICATE OF SERVICE BY MAIL

Phllis Winters certifies that her business address is 111 Sutter Street, San Francisco, California 94104; and that she is a resident of the State of California.

That on the date hereof she served a copy of:

Reply to Counterclaim of Defendant SEA-LAND SERVICE, INC. and Counterclaim of STATES STEAMSHIP COMPANY on each of the following, by placing one copy of each of said documents in an envelope addressed, respectively as follows:

Moses Lasky
 Charles B. Cohler
 Brobeck, Phleger & Harrison
 111 Sutter Street
 San Francisco, California 94104

Lawrence E. Walsh
 Richard E. Nolan
 Davis Polk & Wardwell
 One Chase Manhattan Plaza
 New York, New York

That said envelope was then sealed and postage fully prepaid thereon and on said date was deposited in the United States mail at San Francisco, California.

Dated: June 12, 1977.

/s/ PHILLIS WINTER

Phillis Winter

Appendix L

United States District Court
 for the Northern District of California

Pacific Far East Line, Inc.,

Plaintiff,

vs.

R.J. Reynolds Industries, Inc., et al.,
 Defendants.

States Steamship Company,

Plaintiff,

vs.

Sea-Land Service, Inc. and
 R.J. Reynolds Tobacco Company,
 Defendants.

No.
 C-76-2312 AJZ

No.
 C-77-0582 AJZ

[Filed November 16, 1978]

ORDER APPOINTING SPECIAL MASTER

IT IS HEREBY ORDERED that Douglas R. Young, Esq. is appointed as special master for the purpose of conducting an inspection of those documents known as the "Far East documents," which were produced to defendants by agents and former agents of plaintiffs in the Far East. For said purpose, Mr. Young shall be compensated by defendants.

Dated: November 16, 1978

/s/ Alfonso J. Zirpoli

United States District Judge

Appendix M

Douglas R. Young
Attorney at Law
235 Montgomery Street
San Francisco, California 94104
Telephone: (415) 981-3722

United States District Court
Northern District of California

Pacific Far East Line, Inc.,

Plaintiff,

vs.

R. J. Reynolds Industries, Inc., R. J.
Reynolds Tobacco Company, R. J.
Reynolds Leasing Company, Sea-Land
Service, Inc., and McLean Industries,
Inc.,

Defendants.

No.
C 76 2312 AJZ

States Steamship Company,

Plaintiff,

vs.

Sea-Land Service, Inc. and
R. J. Reynolds Tobacco Company,
Defendants.

No.
C 77 0582 AJZ

[Filed Nov. 22, 1978]

REPORT OF SPECIAL MASTER

I

INTRODUCTION

Plaintiffs have brought actions alleging certain violations of United States antitrust laws, including allegations that defendants have engaged in rebating. Defendants have made certain counterclaims, including allegations that plaintiffs' former agents in the Far East have themselves engaged in rebating.

In July 1978, counsel for the parties and a court-appointed auditor traveled to the Far East for discovery. In the course of this exercise, various documents were obtained from plaintiffs' agents and former agents.

Subsequently, defendants moved for dismissal of plaintiffs' complaints and for sanctions, on the grounds that plaintiffs falsely represented that they did not engage in rebating and that plaintiffs obstructed the discovery process. Plaintiffs moved for dismissal of the counterclaim asserted by defendant Sea-Land Service, Inc. (and for sanctions) on the ground that defendants had themselves obstructed the discovery process.

Defendants intend to use some of the documents obtained during the above-described trip to the Far East to prosecute their motion. Plaintiffs no longer have access to the documents produced in the Far East, and have sought to have such documents produced. Defendants claim to have already produced those documents upon which they intend to rely at the hearings regarding the motions described above, and therefore oppose the document production sought by plaintiffs.

The Court has appointed a special master to examine those documents obtained by defendants in the Far East and not yet produced to plaintiffs, and has instructed said individual (the undersigned) to determine whether any documents relevant to the obstruction and misrepresentation allegations now pending are among those documents not yet produced to plaintiffs. Relevant documents would include the following: (1) Documents tending to demonstrate that rebating was done only at lower levels; (2) documents tending to show that management and counsel were unaware that rebating was occurring; (3) documents that would rebut the fact of rebating; or (4) documents that would substantiate a good faith belief that no rebating was occurring.

II

REPORT

Although few of the documents reviewed fall directly into the categories listed above, several documents (listed by code number below) may prove relevant. (Of course, the significance of the documents identified below is a matter left to the arguments of counsel and to the judgment of the Court.)

The following should be noted: First, the undersigned does not read Japanese and, therefore (with a few exceptions), none of the documents written in Japanese has been identified for possible disclosure. Second, many of the documents identified below appeared several times among the documents reviewed, but only one copy of each document has been identified. Third, for the convenience of the Court, the documents identified for possible disclosure have been photocopied by the undersigned and attached to the

copy of this Report submitted to the Court.¹ Finally, an original and six copies of this Report have been submitted to the Court, so that the Court may, in its discretion, file the Report and disclose it to counsel.

The documents identified for possible disclosure to plaintiffs are the following:

S900266	S902942-43
S900341, and 44	S902997-3001
S900348-49	S903079
S900610	S903104
S900611	S903131-32
S900653	S903152
S900656	S903357
S900659-60	S903365
S900668	S903445
S900671-73	S903506
S900731	S903561-62
S900741-44	S903572
S900754	S903582
S900755	S903687
S900906	S903691
S901156	S903796
S901276	S903799-800
S901347	S903842
S901348	S903954-55
S901370	S903976
S901654	S903983
S901851-52	P900436
S902621, and 25	P900598-600

III TIME AND COSTS

The time spent in reviewing the documents in preparing this report was four (4) days. The cost of xeroxing the documents listed above for submittal to the Court was \$10.05.

Dated: November 20, 1978.

Respectfully submitted,

Douglas R. Young

Douglas R. Young

¹Due to the sensitive nature of this material, and the fact that it has been submitted to the Court under seal, the photocopying of documents was accomplished by the undersigned personally. At no time has any document been in the possession of any person other than the undersigned.

Appendix N

United States District Court
for the Northern District of California

Pacific Far East Line, Inc.,

Plaintiff,

vs.

R.J. Reynolds Industries, Inc., et al.,

Defendants.

States Steamship Company,

Plaintiff,

vs.

Sea-Land Service, Inc. and

R. J. Reynolds Tobacco Company,

Defendants.

No.

C-76-2312 AJZ

No.

C-77-0582 AJZ

[Filed Dec. 4, 1978]

**ORDER REGARDING CERTAIN MATTERS
REFERRED TO SPECIAL MASTER**

By order of November 16, 1978, the court appointed Douglas R. Young, Esq., special master for the purpose of inspecting certain documents submitted by the defendants for an in camera inspection, such documents being those commonly referred to by the parties as the "Far East" documents. Mr. Young has submitted his report to the court, and the court has reviewed the report and the recommendations contained therein. Good cause appearing therefor,

IT IS HEREBY ORDERED that the report of the special master shall be filed in these cases.

IT IS FURTHER ORDERED that the report and the recommendations contained therein are accepted, and the defendants shall produce documents accordingly.

IT IS FURTHER ORDERED that defendants shall pay to Douglas R. Young the sum of \$1,290.05, consisting of \$1,280.00 for his services and \$10.05 for photocopying.

Dated: December 4, 1978

/s/ Alfonso J. Zirpoli

United States District Judge